

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNIVERSAL CITY STUDIOS, INC.,
Plaintiff,

-vs-

NINTENDO CO., LTD. and
NINTENDO OF AMERICA, INC.,
Defendants.

No. 82 Civ 4251(RWS)

Deposition of LORETTA S. SIFUENTES, taken on behalf
of Defendants at 333 South Grand Avenue, Los Angeles,
California, commencing at 9:40 A.M., Wednesday, August 29,
1984, before Harold T. Young, CSR #1940, Notary Public,
pursuant to Subpoena.

A P P E A R A N C E S :

FOR PLAINTIFF:

TOWNLEY & UPDIKE
BY: SANDRA EDELMAN, Attorney at Law
405 Lexington Avenue
New York, New York 10017

FOR DEFENDANTS:

MUDGE, ROSE, GUTHRIE, ALEXANDER & FERDON
BY: JOHN J. KIRBY, JR., ESQ. and
THOMAS G. GALLATIN, ESQ.
180 Maiden Lane
New York, New York 10038

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LORETTA S. SIFUENTES,
having been first duly sworn, was
examined and testified as follows:

EXAMINATION

BY MR. KIRBY:

Q Would you please state your full name.

A My name is Loretta Stella Sifuentes.

Q And where do you reside, Ms. Sifuentes?

A I reside in Encino, California.

Q I would like to show you what we have marked
just prior to your arrival as Defendant's Exhibit 112, which
is a deposition subpoena, and ask you if you received that
subpoena and are appearing here today pursuant to that
subpoena?

A Yes, I have seen it and I am appearing pursuant
to it.

Q Where do you presently work, Ms. Sifuentes?

A I work at L.M.I. Ltd.

Q L.M.I. Ltd.?

A Yes.

Q And that's located at 9701 Wilshire Boulevard?

A Yes, it is.

Q In Beverly Hills, California?

A Yes.

Q And how long have you worked with L.M.I. Ltd.?

1 A Since about mid-January 1984.

2 Q And what is your position at L.M.I. Ltd.?

3 A I'm a negotiator and also an attorney.

4 Q How many employees does L.M.I. Ltd. have?

5 A How many employees? Well, there are two major
6 people, Steve Adler, myself and a secretary.

7 Q Does Mr. Adler have a title?

8 A Well, it's his company. He has whatever
9 title he wants.

10 Q In other words, Mr. Adler owns the company?

11 A Yes.

12 Q Do you have any ownership interest in the
13 company?

14 A No.

15 Q What is the business of L.M.I. Ltd.?

16 A Licensing of properties. Development of
17 properties. In that area.

18 Q When you say "properties," what do you mean
19 by properties?

20 A , It can either be -- Anything is a property,
21 whether it's a television show, motion picture. Whether it's
22 a character someone developed independently or whether it's
23 a personality.

24 Q Does L.M.I. Ltd. develop properties itself or
25 does it serve as an intermediary between people who develop
26 properties and people who wish to obtain licenses to use the

properties?

A It assists people in developing of their property as well as taking properties that are already developed.

Q Now Miss Sifuentes, you are a college graduate. I take it?

A Yes.

Q Where did you graduate from college?

A UCLA.

Q What year was that?

A I don't remember.

Q Are you a graduate of law school?

A Yes.

Q What law school?

A UCLA.

Q And do you remember what year that was?

A Yes, that was 1971.

Q Did you attend law school sometime after you graduated from college?

A No, it was a year after.

Q So would it be fair to say that you graduated from college sometime around 1966 or '67?

A Probably '69.

Q And are you admitted to practice law?

A Yes, I am.

Q Where?

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1 A In the State of California.

2 Q And when were you admitted?

3 A 1972.

4 Q Is your admission still current?

5 A Yes.

6 Q Now prior to working at L.M.I. Ltd., where
7 were you employed?

8 A Coleco.

9 Q And where is Coleco located?

10 A In Hartford, Connecticut.

11 Q And how long were you employed by Coleco?

12 A Under a year.

13 Q So sometime during the period beginning in 1982?

14 A Yes.

15 Q Do you remember approximately when?

16 A I think it was sometime in November of '82.

17 Q And you worked there until sometime short of
18 November of '83?

19 A About July.

20 Q July of '83?

21 A Yes.

22 Q And then you began working at L.M.I. Ltd. in
23 January of '84?

24 A Yes.

25 Q What were your responsibilities at Coleco?

26 A To license out their properties and to look

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7
1 for properties for them to license, put on their toys.

2 Q Were you in a department at Coleco?

3 A A department, I suppose, marketing.

4 Q Did you report to anyone?

5 A Yes, I reported to Al Kahn.

6 Q Were there other people at Coleco engaged in
7 the same type of activity you were engaged in?

8 A Yes.

9 Q Approximately how many?

10 A At least two other people.

11 Q While at Coleco, did you have occasion to work
12 with the legal department?

13 A I spoke to them.

14 Q Who did you deal with in the legal department?

15 A Mr. Schwefel.

16 Q Any other lawyers?

17 A Yes. After a while he hired someone by the
18 name of Richard Blumenthal.

19 Q And what was the nature of your consultation
20 with Mr. Schwefel and Mr. Blumenthal?

21 A Just in general, legal matters having to do
22 with licensing.

23 Q Prior to beginning work with Coleco in or
24 around November of 1982, by whom were you employed?

25 A I was employed by MCA up to the end of
26 August, maybe the first couple of days in September -- I'm

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not sure -- 1982.

Q Of 1982?

A Yes.

Q And for approximately how long had you been employed by MCA?

A Ten years.

Q Was that your first employment after leaving law school?

A No, it was my third.

Q In between the time you left law school and the time you went to work for MCA, by whom were you employed?

A I was employed by the Western Center on Law and Poverty and I was employed by the -- a legal aid in Pacoima. I don't remember the name of it.

Q At the time you left MCA what were your duties?

A My duties were to oversee the legal aspects of problems in contracts and so on of the licensing department, and also to seek licenses for various MCA property.

Q Did you negotiate licenses for various MCA property?

A Yes, I did.

Q Did you solicit potential licenses for MCA?

A Yes.

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1 Q Had your duties changed between the time you
2 began work at MCA and the time you left?

3 A Yes.

4 Q What were your duties originally?

5 Q Well, I was employed exclusively in the law
6 department and I handled, I was low man on the totem pole
7 so I handled a lot of things that are strictly legal and have
8 to do with television contracts and all the people who would
9 die at the studio and air pollution because we made smoke
10 and, you know, we would do various things in various movies
11 and a lot of things like that, and I handled their
12 trademarks.

13 Q But how long were you employed in the law
14 department?

15 A Four years.

16 Q Is it fair to say that for the last six years
17 that you were employed at MCA your duties were in the
18 marketing department?

19 A Yes, licensing.

20 Q Licensing department. Was it called the
21 Licensing Department?

22 A No, it was called Merchandising Corporation
23 of America, Inc.

24 Q And was there a department within Merchandising
25 Corporation of America, Inc. in which you worked?

26 A No, that was all we did.

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1 Q And to whom did you report during the time you
2 worked at Merchandising Corporation of America, Inc.?

3 A Steve Adler.

4 Q Was that true during the entire six-year
5 period?

6 A Yes, I always reported to him.

7 Q During that time, to your knowledge, did
8 Mr. Adler have a title?

9 A Yes.

10 Q What was that title?

11 A Vice-president in charge of merchandising.

12 Q And did you have a title?

13 A Yes.

14 Q What was your title?

15 A Vice-president.

16 Q Did your title change at any time during that
17 six-year period?

18 A No.

19 Q At the present time does L.M.I. Ltd. have any
20 business relationships with Universal?

21 A No.

22 Q Or MCA?

23 A No.

24 Q Do you currently receive any benefits from
25 MCA or Universal?

26 A Well, I just received some more stock from

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1 them, which is a part of my previous employment. It takes
2 them a long time to figure out how much stock you get.

3 Q But you have not received any ongoing payments
4 from them?

5 A No.

6 Q When did you cease to receive any payments from
7 them?

8 A As of the end of 1982.

9 Q During the time you were working for
10 Merchandising Corporation of America, were you located in
11 Los Angeles?

12 A Yes.

13 Q Working out of Universal Studios?

14 A Yes.

15 MR. KIRBY: I am going to ask the reporter to mark
16 as Defendant's Exhibit 113 a letter dated September 9, 1981,
17 from a Mr. Pasco to Ms. Sifuentes with an attachment, which
18 is a letter dated August 31, 1981, from Mr. Pasco to
19 Mr. Steve Adler.

20 (Defendant's Exhibit 113 was marked
21 for identification by the reporter
22 and is attached hereto.)

23 Q BY MR. KIRBY: Miss Sifuentes, I would ask you
24 to look at this letter and tell me whether or not you can
25 identify this as the letter that you received?

26 A Yes, this is a letter I received. I don't know

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1 if I received the attachment, but I know I received the
2 letter.

3 Q You will note that in the first paragraph of
4 the letter it says, "Enclosed is a copy of my original letter
5 to Steve."

6 A Yes, but I don't remember the letter.

7 Q Now Miss Sifuentes, prior to receiving this
8 letter, had you had any telephonic communications with
9 anyone from Tiger Electronic Toys, Inc.?

10 A I'm afraid I don't remember that.

11 Q Again, you will note in the first paragraph
12 the letter says, "Thank you for returning my call." Do you
13 recollect that call?

14 A I don't recall. I could very well have spoken
15 to them.

16 Q Prior to the time on or about September 9,
17 1981, when you received this letter, which has been marked
18 as Defendant's Exhibit 113, had you ever heard of Tiger
19 Electronics.

20 A No, I had not.

21 Q Do you recall whether Mr. Adler asked you to
22 handle the communications with Tiger Electronics?

23 A I don't actually recall, although he must have.
24 I don't recall any of that at this time.

25 Q Now Miss Sifuentes, it appears from this letter
26 that Tiger was interested in obtaining a license for "King

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1 Kong" for a hand-held electronic game and a video game. Were
2 you responsible at MCA for licensing "King Kong"?

3 A Steve Adler and I were.

4 Q But prior to this period on or about September
5 9, 1981, had you licensed -- you or Mr. Adler -- had
6 arranged for any licenses for "King Kong"?

7 A I don't remember if any licenses were prior
8 to this date.

9 Q Do you remember, again with the benefit of
10 having this letter in front of you, when Universal first
11 began to make efforts to license "King Kong"?

12 A With this letter in front of me, obviously
13 sometime in 1981. Beyond that, I don't remember any dates.

14 Q Can you tell us when you first became aware
15 that "King Kong" was a property that Universal was seeking
16 to license?

17 A Sometime in 1981.

18 Q How did you become aware of that?

19 A Through a memo.

20 Q And what memo was that?

21 A That was a memo from the law department.

22 Q Directed to you or directed to someone else?

23 A Directed to Mr. Sheinberg.

24 Q And who is Mr. Sheinberg?

25 A He is the president of MCA.

26 Q To the best of your recollection, what did that

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1 memorandum say?

2 A Well, I'm afraid I would have to assert the
3 attorney-client privilege there since I was an attorney and
4 that was a memo from an attorney to Mr. Sheinberg.

5 Q You received a copy of the memorandum?

6 A Yes.

7 Q What did you do with the memorandum when you
8 received it?

9 A I called the law department.

10 Q And why did you call the law department?

11 A To talk to them about the contents.

12 Q And what did you ask them?

13 A Well, I have to assert the attorney-client
14 privilege there.

15 Q Did you ask them whether or not "King Kong"
16 was now a property which MCA could license?

17 A I don't think that I can really answer any
18 questions as to my discussions with the attorneys in the law
19 department.

20 Q Now Miss Sifuentes, you are an attorney
21 admitted to practice law and you, however, no longer are
22 working for Universal City Studios. Ms. Edelman, who you
23 have met represents Universal City Studios here. Ms. Edelman
24 is also familiar with the subject matter of the lawsuit in
25 which this deposition is being taken and she also is familiar
26 with what documents have been produced by Universal City

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1 Studios to the defendants in this case and I point out to
2 you, as I am sure you well know, that the attorney-client
3 privilege is a privilege that is not possessed by you, but
4 is possessed by Universal City Studios which can direct you
5 not to answer a question which they properly believe and are
6 upheld by a court as falling within the ambit of attorney-
7 client privilege.

8 So I would caution you that while I think it
9 is properly professional of you to be concerned about the
10 attorney-client privilege and I appreciate your concern,
11 that this deposition is being taken at some expense some
12 distance from the forum where this case is going to be
13 conducted. And I believe that it would be appropriate
14 practice for Miss Edelman to tell you when the attorney-
15 client privilege is being asserted by the owner of that
16 privilege, Universal City Studios.

17 For example, in connection with this line of
18 questions, I believe and Miss Edelman, you correct me if
19 this is mistaken, I believe that the memorandum in question
20 was produced to us pursuant to our interrogatories and Rule
21 34 request and that we will obviously have a very long and
22 very tedious deposition if we have to rely on someone who
23 is not involved in this case, Miss Sifuentes, to be claiming
24 the privilege. And I would request that you appropriately
25 direct her when it is a matter of privilege and also tell
26 her when it is a matter that either no privilege attaches

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1 or because Universal has chosen in its wisdom not to assert
2 the privilege so we can get along with this deposition.

3 MS. EDELMAN: Okay. I certainly understand the
4 attorney-client privilege Universal has claimed. For the
5 ease of not interrupting Miss Sifuentes, I am leaving it in
6 this instance for her to make the objection on attorney-
7 client privilege. If I hear she hasn't, and I think it is
8 appropriate, I would step in and say I am claiming it for
9 Universal. I am familiar, I think, with the memo that's
10 being referred to and I believe it has not been produced
11 pursuant to the privilege.

12 MR. KIRBY: And I do not have a copy of it in front
13 of me.

14 MS. EDELMAN: Not even having to talk to her to know
15 exactly what the memo is, to the best information I have,
16 I do not think it was produced.

17 MR. KIRBY: Well, at an appropriate adjournment we
18 will ascertain whether a copy of that memorandum has been
19 produced and is in our files.

20 MS. EDELMAN: Okay.

21 THE WITNESS: I would also like to state that my
22 attorney, whom I consulted before coming here, told me that
23 your interpretation of California law as you just stated it
24 is not exactly as black and white as that and that I do
25 have an obligation and that unless directed by Miss Edelman
26 to answer your questions, which I feel come under this, the

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1 attorney-client privilege, I will not answer.

2 MS. EDELMAN: And I will certainly endeavor to know
3 if something has been produced to tell you. I don't think
4 in this instance that applies.

5 MR. KIRBY: Miss Edelman, since we have had this
6 colloquy, I won't prolong this because I want to get on with
7 asking questions. I also should point out and request that
8 in the interest of avoiding a trip to the courthouse here in
9 Los Angeles or a trip to Judge Sweet and resumption of the
10 deposition, that we be careful to confine assertions of
11 privilege to those areas which are properly protected. And
12 obviously I will respect any assertion of privilege that is
13 within the appropriate ambit.

14 MS. EDELMAN: I understand.

15 Q BY MR. KIRBY: Now Miss Sifuentes, about when
16 did you receive this memorandum?

17 A I'm not really sure, but I think it was June
18 or July of the same year.

19 Q Of 1981?

20 A 1981.

21 Q And you said that you did make a telephone
22 call to the law department after receiving this memorandum.

23 A Yes.

24 Q And I take it that this memorandum was sent
25 to you by Mr. Sheinberg?

26 A Sent to Mr. Adler.

1 Q It was sent to Mr. Adler by Mr. Sheinberg.
2 In other words, you and Mr. Adler were not copied on the
3 original memorandum from the law department to Mr. Sheinberg?

4 A I don't believe so.

5 Q So that if this memorandum were to be found
6 or were to be produced pursuant to an order of the court,
7 we would find a memorandum from the law department to
8 Mr. Sheinberg without indicating any copies to you or to
9 Mr. Adler.

10 A I couldn't say for certain, but I don't believe
11 we were copied.

12 Q When Mr. Sheinberg sent the memorandum to
13 Mr. Adler, did he include a cover memorandum?

14 A I couldn't say for sure.

15 Q Were you and Mr. Adler directed to commence
16 seeking persons to license the "King Kong" property on or
17 about June or July of 1981?

18 A I couldn't say that anyone actually directed
19 us to do that.

20 Q Were you told that it was available for MCA
21 to market?

22 A Yes.

23 Q Or to merchandise, excuse me. I take it that
24 merchandising is the preferred word to marketing.

25 A Well, depends on what business you are in.

26 Q Well, the business that you are in is the one

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1 we are talking about.

2 A Yes.

3 Q Merchandising is the preferred word. And did
4 you on or about that time begin efforts to merchandise
5 "King Kong"?

6 A Yes.

7 Q And what steps did you take to do that?

8 a Well, we had a newsletter and we put in a list
9 of properties that were available and I don't think we did
10 much beyond that.

11 Q Did you send any letters specifically directed
12 to the availability of "King Kong" to any potential
13 licensees?

14 A Not that I recall.

15 Q This newsletter to which you referred, to whom
16 was it circulated?

17 A We have a long mailing list to various
18 manufacturers in several different businesses who generally
19 were interested in licensing.

20 Q At the time you left MCA, were you still
21 circulating such a newsletter?

22 A I don't believe we were.

23 Q Do you recall when between June or July of '81
24 when you left MCA --

25 A November of '82.

26 Q Excuse me, November of '82.

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1 A Or close to that.

2 Q -- that you ceased sending out such a
3 newsletter?

4 A Well, I don't recall exactly, but it would have
5 been probably prior to the 1982 toy fair.

6 Q Which would have taken place in February?

7 A Yes.

8 Q Is that the toy fair that takes place in New
9 York City?

10 A Yes.

11 Q Now can you describe for me a typical issue
12 of this newsletter?

13 A Well, in general it listed properties that we
14 had available. We had a little bit of artwork and blurbs
15 to make things look more attractive. And sometimes we took
16 excerpts from the Hollywood Reporter and so on to make people
17 aware of the kind of publicity certain properties were
18 getting, things like that.

19 Q Did you include any artwork or any blurb in
20 connection with the availability of "King Kong"?

21 A I don't recall.

22 Q Who was in charge of preparing this newsletter?

23 A At this time it was Connie Rush.

24 Q Did she work for MCA?

25 A She worked for merchandising.

26 MS. EDELMAN: What time is "this time"?

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A 1981.

Q Did Miss Rush report to you?

A She reported both to Steve Adler and to me, but of course Steve Adler was in charge so more to him.

Q Prior to the circulation of any issue of the newsletter, would you and Mr. Adler review its contents?

A Yes.

Q So you would have reviewed the contents of the newsletter that indicated that "King Kong" was available for merchandising?

A Yes.

MR. KIRBY: Miss Edelman, we have not been furnished with a copy of that newsletter. I request that the issue or issues in which the availability of "King Kong" was made known to the trade be furnished to us.

MS. EDELMAN: I have listened.

Q BY MR. KIRBY: Miss Sifuentes, between the time that the newsletter made known to the trade that the "King Kong" property was available and September 9, 1981, the date of Defendant's Exhibit 113, did MCA receive any inquiries with respect to the "King Kong" property?

A You mean between what dates? You mean before this date?

Q Before this date.

A September 9, 1981?

Q Yes.

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1 A I don't recall whether -- I don't even recall
2 whether that particular newsletter went out before or after
3 this September 9, 1981 date.

4 Q Prior to September 9, 1981 and the inquiry
5 from Tiger Electronics, did MCA receive any inquiries with
6 respect to the "King Kong" property?

7 A I don't recall whether the inquiries were
8 prior to September 9th.

9 Q Do you know whether MCA entered into any
10 licenses for the "King Kong" property prior to September 9,
11 1981?

12 A I don't recall.

13 Q Do you recall generally any licenses that
14 MCA entered into for the "King Kong" property at any
15 point?

16 A Yes.

17 Q What were they?

18 A There was one for a Halloween costume. I
19 think it was the Ben Cooper Company. I don't think we had
20 any other actual licenses. We did have other inquiries.

21 Q What other inquiries do you recall?

22 A One for watches and one -- I don't remember
23 exactly what it was -- I think it was for advertising, a
24 promotion.

25 Q Any others that you recall at any time during
26 the period from the time you became aware that "King Kong"

A001645

1 was available and the time that you left MCA?

2 A I don't recall any others.

3 Q Now after you were informed via this
4 memorandum from the law department to Mr. Sheinberg which
5 was then sent on to you and Mr. Adler by Mr. Sheinberg of
6 the availability of "King Kong" --

7 MS. EDELMAN: I object to that characterization.
8 I don't know that it was testified to what was in that
9 memorandum.

10 MR. KIRBY: The record will speak for itself.

11 Q -- that "King Kong" was available, did you
12 commission any trademark searches for "King Kong"?

13 A I don't recall.

14 Q Were you informed at any time during the
15 summer of 1981 that Universal's ability to merchandise
16 "King Kong" was subject to any restrictions?

17 A Could you repeat the question?

18 (Whereupon, the previous question
19 was read back.)

20 THE WITNESS: In the summer? No.

21 Q BY MR. KIRBY: Were you informed at any time
22 that Universal's ability to merchandise "King Kong" was
23 subject to any restrictions?

24 A I think that that would have been a
25 conversation with the law department to which I would have
26 to assert the attorney-client privilege.

1 Q Did you inform the trade that Universal's
2 ability to merchandise "King Kong" was subject to any
3 restrictions?

4 A No.

5 Q Was the trade informed that Universal had the
6 ability free and clear to merchandise "King Kong"?

7 A I don't believe it was put that way.

8 Q How was it put?

9 A It was just listed.

10 Q As an available property?

11 A Yes.

12 Q At any time during the period when you were
13 employed at MCA did you in discussions with any potential
14 licensee discuss any restrictions on MCA's ability to
15 merchandise "King Kong"?

16 A I discussed that with Tiger Electronics.

17 Q When?

18 A When? During the period of negotiation and
19 after as well.

20 Q But beginning on or around September 9, 1981?

21 A Yes.

22 Q What did you tell Tiger Electronics?

23 A That I was licensing the original movie, sort
24 of.

25 Q I'm sorry, would you care to elaborate on that?

26 A It's a little complicated. There was a

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1 Dino DiLaurentiis movie. I didn't have the photographs from
2 the original movie. They would have to create their own
3 artwork, but that otherwise, I was licensing that movie and
4 the stories that was contained in that movie.

5 Q When you say you didn't have the photographs,
6 you mean you didn't physically have the photographs or you
7 mean you didn't have the photographs available to serve as
8 a basis for a license?

9 A I didn't have the copyright in the photographs
10 and I needed the cooperation of the copyright owner, which
11 I didn't always get.

12 Q And who was the copyright owner?

13 A I really haven't thought about it for a long
14 time. Wasn't it RKO? I'm not quite sure.

15 Q Other than telling Tiger that they would have
16 to create their own artwork, did you tell them anything else
17 that resulted from the restrictions on Universal's ability
18 to license "King Kong"?

19 A I think I just stated it -- that it was that
20 story as contained in that movie. That's what I was
21 licensing.

22 Q The original movie?

23 A Yes.

24 Q But not the 1976 remake.

25 A That's right.

26 Q And not the photographs from the original

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1 movie.

2 A That's right. Unless I could obtain them, of
3 course.

4 Q From the owner?

5 A Right.

6 Q Now after September 9, 1981, did you have a
7 meeting with any representatives, a meeting or meetings with
8 any representatives of Tiger Electronics?

9 A Anytime after September 9th?

10 Q Anytime within the next two weeks.

11 A No.

12 Q Did you have any telephone conversations with
13 anyone from Tiger Electronics?

14 A I had several telephone conversations.

15 Q With whom did you speak?

16 A Well, I spoke to Mr. Pasco and Mr. Rissman.

17 Q Is that R-i-s-s-m-a-n?

18 A Yes.

19 Q And to the best of your recollection, tell me
20 what took place during the first of those telephone
21 conversations.

22 A I don't actually recall the telephone
23 conversations. They were generally negotiating and
24 discussing their financial status.

25 Q I take it that Tiger Electronics was not on
26 the MCA newsletter mailing list?

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A No. We at that time were not mailing out to people in the electronic-game business. That was a brand new industry.

Q So it was not only Tiger, but on one in the electronic-game business?

A That's right.

Q Now Miss Sifuentes, I'm going to ask the reporter to mark as Defendant's Exhibit 114 --

A Well, I probably should amend what I just said. There were some people in the electronic-game business who also had other aspects of their business which we concentrated on. We were beginning to think about it, but hadn't really gotten around to it.

MR. KIRBY: Thank you.

Would you please mark as Defendant's Exhibit 114 a document with the name on it "Universal City Studios, Inc., Attention: Ms. Loretta Sifuentes," and on the letterhead of "Trademark Service Corporation."

(Defendant's Exhibit 114 was marked for identification by the reporter and is attached hereto.)

Q BY MR. KIRBY: Miss Sifuentes, you have in front of you the document marked Defendant's 114. Do you note the date on that document?

A Yes.

Q Did you receive that document?

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1 A Yes.

2 Q I take it -- Perhaps you can read this more
3 clearly than I can -- that it has your received stamp on it.

4 A It has like September 29.

5 Q Did you ask Trademark Service Corporation to
6 conduct this search?

7 A Yes.

8 Q What occasioned you to ask them to conduct this
9 search?

10 A Well, it was my general practice if I was going
11 to license a property to get a trademark search.

12 Q Was it your general practice with respect to
13 any property that MCA owned --

14 A Yes.

15 Q -- to commission a trademark search?

16 A Yes.

17 Q Whether or not you had been licensing that
18 product prior to that?

19 A If I was going to license. I mean, I didn't
20 have to wait for someone to call me that was interested in
21 the licensing. If I thought it was a valuable enough property,
22 I would go ahead and get a trademark search. If I didn't
23 think it was available and it looked like somebody was
24 interested, I would go ahead and get a trademark search.

25 Q Is this true even of newly developed properties
26 of Universal or MCA?

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1 A Yes.

2 Q So with respect to any property, before you
3 initially licensed it, whether it was a new property or a
4 property that's been around for sometime, you would
5 commission a trademark search?

6 A Yes.

7 Q Is it fair to say that this trademark search
8 resulted from the inquiry from Tiger Electronics?

9 A Partially.

10 Q What do you mean by "partially"?

11 A Well, I would have made a trademark search
12 anyway.

13 Q But did you make a trademark search prior to
14 the time on or about September 25, 1981.

15 A September 25 was the date they sent it to me.
16 No. I mean, it was around that date. Probably mid-September
17 that I would have ordered it.

18 Q Is this the first trademark search you
19 commissioned into "King Kong"?

20 A Yes.

21 Q Now after you received this report from the
22 Trademark Service Corporation, did you review it?

23 A Yes.

24 Q Did you send a copy of the report to anyone
25 else at Universal or MCA?

26 A Usually I would send copies to John Nuanes in

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1 A I don't believe I did.

2 Q Did you write anyone on this list?

3 A I don't believe so.

4 Q Did you call anyone on this list?

5 A Well, you mean this list right here?

6 Q Yes, this list beginning with "King Kong shoes"
7 and ending with "King Ding Kong."

8 A I really don't recall what I did. I am quite
9 sure I didn't call -- I am not even sure I didn't call
10 anybody. But I just don't recall what activity I took.

11 Q Did you write any letters to anyone on this
12 list?

13 A I don't recall writing any letters.

14 Q Do you recall today any conversations you had
15 with a representative of anyone on this list?

16 A Of course I know I spoke to RKO and I may or
17 may not have spoken to Paramount and of course I spoke to
18 Universal. I don't remember whether I spoke to the other
19 people or not.

20 Q When you say of course you spoke to RKO and
21 Paramount, do you mean you spoke to them as a result of
22 obtaining this trademark report or you spoke to them
23 generally?

24 A Generally.

25 Q Did you tell anyone listed in this section of
26 this trademark report they were to cease using "King Kong"

1 to designate their product?

2 A I don't recall doing that, no.

3 Q Look at the section under "State
4 Registrations." Did you have any conversation with anyone
5 at King Kong Window Cleaners in Topeka, Kansas?

6 A No.

7 Q Did you write to them?

8 A No.

9 Q Look to the section under "Business Titles,"
10 which is on this page and carries over to the next page and
11 tell me if you spoke to anyone representing any of these
12 companies.

13 A No, I didn't.

14 Q Did you write to them?

15 A No.

16 Q Did you have any contact with them whatsoever?

17 A No.

18 Q Please look at the next page, and I want you
19 to take your time, but to save everyone's time here why
20 don't you review the next pages in the report and tell me
21 whether you spoke to or wrote to or contacted in any way
22 anyone that appears here.

23 A I don't recall. I haven't finished, but I
24 don't recall whether I did or didn't. I know I didn't write
25 to anyone, that is, I'm pretty sure I didn't write to anyone.
26 I don't remember whether I spoke to anyone or not.

1 Q Did you tell anyone, a representative of anyone
2 who appears anywhere in this trademark search report that
3 they were to cease and desist from using "King Kong"?

4 A No.

5 Q Did you request the institution of any
6 proceeding by Universal or MCA against anyone whose name
7 appears on this list?

8 A No.

9 MS. EDELMAN: What was that last question?

10 MR. KIRBY: I asked if she requested that any
11 proceeding be instituted.

12 Q Now after reviewing this report yourself and
13 sending a copy to Mr. Nuanes and discussing it with
14 Mr. Adler, did you do anything further with this report?

15 A I don't recall doing anything further.

16 Q How many times have you discussed it with
17 Mr. Adler?

18 A I really don't remember.

19 Q What did you say to Mr. Adler?

20 A I think that would come under the attorney-
21 client privilege.

22 Q How many times did you speak to him?

23 A I don't remember.

24 Q Did you speak to him after September 1981
25 about this report?

26 A Yes.

1 to this trademark search or any mark cited therein, I think
2 would be privileged. But if you want to ask her did she show
3 him or point out anything in it, I think that would be open.

4 MR. KIRBY: Thank you. That indeed was my question.

5 MS. EDELMAN: I didn't understand it that way.

6 Q BY MR. KIRBY: Miss Sifuentes, did you point
7 out to Mr. Adler that the report showed that other companies
8 were using the mark "King Kong"?

9 A I think I expressed to an earlier question
10 that we did discuss the search, and I would say without
11 getting into actual communication, that we discussed it
12 thoroughly.

13 Q My question is quite specific: Did you point
14 out to him that other people were using the mark "King Kong"?

15 A Of course.

16 Q As a result -- and I believe you will forgive
17 me, I believe I have asked you this question already and I
18 believe there is an answer, but let me just make sure since
19 there has been all this colloquy that we have it clear on
20 the record -- after the conversation with Mr. Adler, did
21 MCA or Universal in fact institute action against anyone
22 whose name appears in this report?

23 A Not that I know of.

24 Q Now as part of your responsibilities for
25 Merchandising Corporation of America, did you make
26 recommendations that actions be instituted against people

1 who were using properties that Universal claimed an
2 ownership interest in without obtaining a license from
3 Universal?

4 A Are you talking about the people in this
5 search?

6 Q I'm talking about as part of your duties.

7 A Could you rephrase it?

8 Q Surely. As part of your duties and
9 responsibilities at Merchandising Corporation of America,
10 did you make recommendations that legal action be instituted
11 against people who were using properties that Universal owned
12 without a license from Universal?

13 A Yes.

14 Q Did you do that frequently?

15 A Whenever the occasion arose.

16 Q During the last two years of your employment
17 at Universal, did you make such recommendations?

18 A Yes.

19 Q As a result of your recommendations, were
20 actions instituted?

21 A Yes.

22 Q Can you tell me some of the products involved
23 in actions which you recommended?

24 A I don't specifically recall.

25 Q How typically did it come to your attention
26 that there were products being merchandised under a trademark

1 trademark search conducted?

2 A No. I don't recall.

3 Q After the initial discussion with Tiger, you
4 testified that you did not meet with them.

5 A No.

6 Q But did you have any further discussions in
7 or about the time period about this product?

8 A Well, I don't specifically recall the number
9 of phone conversations or exactly when they were, so I can't
10 be any more specific than I already have been with regard
11 to that question.

12 Q Can you recall anything else that you discussed
13 with Mr. Rissman or Mr. Pasco or any other representative
14 of Tiger in or about this time period about their proposal
15 to obtain a license from MCA?

16 A Yes, I asked them why they wanted such an old
17 movie when we had some other properties.

18 Q It sounds like a good question. What was
19 their response?

20 A They said they just loved it.

21 Q They just loved the old movie?

22 A That's right, and they thought they could do
23 something with it.

24 Q Did they discuss with you any unique ideas
25 that they had that they thought would differentiate their
26 proposed electronic hand-held game from other games on the

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1 market?

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2 A No.

3 Q Did they discuss with you that there would be
4 any unique feature to using a character in an electronic
5 hand-held game?

6 A Not specifically, other than that they liked
7 "King Kong."

8 Q Did they discuss with you whether or not there
9 were any other electronic games on the market which used
10 characters, well-known or otherwise?

11 A No.

12 Q Did you discuss with them whether or not there
13 were any games on the market which used apes, monkeys,
14 gorillas?

15 A No.

16 Q Did you ultimately enter into a license for
17 MCA with Tiger Electronics?

18 A For Merchandising Corporation of America, yes.

19 Q Was that license signed by mail or was there
20 a meeting at which it was signed?

21 A I believe it was all done by mail at this time.

22 Q I am going to show you what has been marked
23 at a prior deposition as D-18 for identification and ask you
24 whether or not that document is the license that was entered
25 into with Tiger Electronics?

26 A It appears to be.

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44
1 Q The signature of the licensor is illegible.
2 Did you sign this license?

3 A No.

4 Q Pardon me?

5 A No, I didn't.

6 Q Do you know who did?

7 A Well, I can't read this signature, but
8 normally Steve Adler signed the licenses.

9 Q That was not something that you normally did?

10 A I did not do that.

11 MS. EDELMAN: I may have a better copy with me if
12 you are interested.

13 MR. KIRBY: Well, I'm always interested.

14 MS. EDELMAN: It's lighter, more legible. This is
15 a copy of what was Rissman deposition Exhibit 4, also Tiger
16 Electronics license. I am showing it to Miss Sifuentes to
17 see if she could identify the signature.

18 THE WITNESS: Yes, I can see it says "Steve Adler."

19 MR. KIRBY: Thank you, Miss Edelman.

20 Q Prior to the execution of this license, was
21 it reviewed by anyone at the law department at MCA or
22 Universal?

23 A I don't recall that it was.

24 Q As a matter of practice were licenses reviewed
25 by people in the law department prior to their execution?
26

A No.

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1 Q Other than Mr. Adler, did you discuss the
2 granting of this license with anyone else at Universal --
3 excuse me -- Universal or MCA?

4 A I believe I discussed it with Joe DeMuro.

5 Q Who is Joe DeMuro?

6 A He is an attorney in the law department.

7 Q Did you discuss it with him in order to obtain
8 legal advice with respect to issuing the license?

9 A Yes.

10 Q So it is fair to say did you do this prior to
11 issuing the license?

12 A I don't have direct, complete memory, but I'm
13 sure I did. I mean, I don't remember very well.

14 Q So it is fair to say that in connection with
15 the issuance of this license you did consult with the law
16 department of Universal or MCA?

17 A Yes.

18 Q But that was not your normal practice?

19 A No, I always consulted with the law department
20 but not with regard to every license. It is just this was
21 in the beginning of discussing "King Kong." I always
22 discussed every single property with the law department.

23 Q Now let me, because the record, I think, is
24 quite unclear at this point, let me just review this with
25 you. You did discuss the issuance of this license with
26 Mr. DeMuro of the law department at MCA/Universal.

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A Yes, as a part in general of granting licenses for "King Kong."

Q And it was not your normal practice to have licenses reviewed by the law department prior to their issuance?

A That's right.

Q At any point prior to the time this license was issued -- Let me strike that and state this for the record.

Miss Sifuentes, as you know, probably at least as well or maybe better than I do, that because you are physically located in Los Angeles that you cannot be compelled to come to New York to testify in the trial of this proceeding, which is captioned Universal City Studios vs. Nintendo Company, Ltd. And I am also sure, since we furnished it to you, that you have read a copy of the opinion of Judge Sweet in connection with the summary judgment rendered to Nintendo in connection with this proceeding.

A Yes, I have read it briefly.

Q So you are generally aware of the status of this proceeding, at least insofar as having read that opinion.

A Generally, yes.

Q Now let me be clear for you since this is something that may not have emerged simply from reading the opinion; that Nintendo has pending counterclaims against

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1 Q Did you have a practice of on a periodic basis
2 commissioning a new trademark search?

3 A For the same?

4 Q For the same property.

5 A No.

6 MR. KIRBY: Now I would like, Mr. Reporter, to
7 please mark as Defendant's Exhibit 115 a document that is
8 five pages long, including a cover letter dated December 9,
9 1981, from Miss Sifuentes to a Ms. Yoshikawa. Excuse me,
10 let me revoke that description because I inadvertently had
11 two documents. The document which I am asking Mr. Young to
12 mark at this point is a two-page document, that cover letter
13 as described.

14 (Defendant's Exhibit 115 was marked
15 for identification by the reporter
16 and is attached hereto.)

17 Q BY MR. KIRBY: Miss Sifuentes, you have in
18 front of you Defendant's Exhibit 115 for identification.

19 A Yes.

20 Q Would you please look at that and tell me
21 whether or not you can identify that letter?

22 A Yes.

23 Q You can identify it?

24 A Oh, I see. Yes, I will look at it. I
25 recognize it.

26 Q Who is Ms. Yoshikawa?

1 A I don't know her title, but she works at the
2 tour and she was in charge or worked for someone who was in
3 charge of placing products at the tour for sale.

4 Q Was this product which you enclosed with this
5 letter of December 9, 1981, a product produced by Tiger
6 Electronics?

7 A No.

8 Q Do you recall now what product it was?

9 A No. It was independently purchased.

10 Q What do you mean by "independently purchased"?

11 A I mean I didn't go to Tiger Electronics.

12 Q Was it a product produced by someone who had
13 a license from MCA or Universal?

14 A No, they didn't put the markings on; we did.

15 Q At the time you furnished this product to
16 Miss Yoshikawa, was it a product produced under license by
17 MCA or Universal?

18 A It didn't have to be under license. We were
19 selling it ourselves.

20 Q This was a product that was being manufactured
21 by MCA or Universal?

22 A Not manufactured by -- We didn't manufacture
23 it, no, but we were selling it ourselves under that name.

24 Q Were you in fact on December 9, 1981, selling
25 the product, a computer hand-held electronic game entitled
26 "King Kong"?

1 A We sold it to the tour. We put it on display
2 for sale.

3 Q Prior to December 9, 1981, were you selling
4 the product, an electronic hand-held game called "King
5 Kong"?

6 A No.

7 Q You say you sold it to the tour?

8 A Yes.

9 Q You then put it on sale to the public?

10 A Yes.

11 Q Did you sell it to anyone other than the tour?

12 A No.

13 Q Who developed this game?

14 A The game itself was not developed by Universal
15 and I don't know who developed it.

16 Q Who purchased the game for Universal or MCA?

17 A I don't recall.

18 Q Did you have anything to do with purchasing
19 it?

20 A I might have.

21 Q Did the game have anything to do with a
22 gorilla?

23 A I don't believe so.

24 Q What did it have to do with?

25 A It was just an electronic hand-held game.

26 Q What did it have to do with "King Kong"?

1 A It had the name on it.

2 Q Other than having the name on it.

3 A I don't recall, but probably nothing.

4 Q Who developed the idea of putting the "King
5 Kong" name on this hand-held electronic game?

6 A Oh, I am sure that I did.

7 Q You did?

8 A Yes.

9 Q And how did the game itself come to your
10 attention?

11 A This particular game?

12 Q This particular game.

13 A I went out looking for a pretty generic-looking
14 type of game.

15 Q Where did you look?

16 A In the stores that sold them. I don't recall
17 specifically.

18 Q In the Los Angeles area?

19 A Yes.

20 Q Department stores?

21 A I don't think a department store, but in the
22 general stores.

23 Q General stores that sold electronic games?

24 A Yes.

25 Q Did you go into any video arcades?

26 A Arcades? No, they don't sell electronic games.

1 Q I am asking you if in connection with this you
2 went into any video arcades.

3 A No.

4 Q Did you determine to begin your expedition
5 into general stores selling electronic hand-held games by
6 yourself or did you discuss that with anyone prior to doing
7 it?

8 A Oh, I discussed it.

9 Q With whom?

10 A You mean for "King Kong" specifically?

11 Q I'm talking about your expedition into
12 electronic game stores.

13 A I'm sure I discussed it with the law department
14 and probably Mr. Adler.

15 Q What did you say to Mr. Adler?

16 A I was going to look for some games.

17 Q When did you start your look for games?

18 A I don't recall. Sometime around that time.

19 Q Was it close to December or closer to
20 September?

21 A I really -- I don't recall.

22 Q Did anyone at Universal or MCA tell you to
23 search for a game, an electronic hand-held game upon which
24 the name "King Kong" could be affixed for resale to the
25 public?

26 A I don't believe anybody gave me that specific

1 instruction.

2 Q Did anyone give you any general instruction
3 of that nature?

4 A I don't believe so.

5 Q Miss Sifuentes, I'm asking you this: Were you
6 sitting at your desk one day and you suddenly decided well,
7 gee, I'll go out looking for electronic hand-held games which
8 have nothing to do with "King Kong" but are generic enough
9 that we can put the name "King Kong" on them or did someone
10 tell you to go out and do that?

11 A No, I did that.

12 Q You did that? That was an idea that you
13 formulated?

14 A Yes.

15 Q And prior to doing that you did discuss it
16 with people?

17 A Yes.

18 Q Who did you discuss it with other than
19 Mr. Adler and people in the law department?

20 A Nobody.

21 Q Did you tell Mr. Adler why you thought that
22 was a good idea?

23 A I'm sure I did.

24 Q What did you say to him?

25 A Well, I think that comes under -- I think it
26 comes under attorney-client privilege.

1 Q Did you tell Mr. Adler that it was important
2 to get a hand-held electronic game on the market with the
3 name "King Kong" on it as soon as possible?

4 A Well, I think that -- I am just not sure
5 about -- I mean, it is a communication about that
6 particular subject and I think I have to assert the
7 attorney-client privilege.

8 Q I am asking you the question -- I do not hear
9 a direction from Universal for you not to answer that
10 question -- I am asking you to answer the question.

11 MS. EDELMAN: She believes it's an attorney-client
12 privileged statement. I would direct her not to answer.

13 MR. KIRBY: We will explore that in more detail,
14 Miss Sifuentes and Miss Edelman, I can assure you.

15 Q Now did you prior to your expedition into the
16 stores, Miss Sifuentes, call Tiger Electronics and ask them
17 how they were coming along with their hand-held electronic
18 game to be called "King Kong"? Yes or no?

19 A I told you that I really don't recall when I
20 had telephone conversations with them and so on.

21 Q Did you between September 18, 1981 and
22 December 9, 1981, call Tiger Electronics and ask them how
23 they were coming along with their hand-held game?

24 A I probably did, but I don't have a specific
25 recollection.

26 Q Did you call them immediately prior to leaving

1 your desk at Universal City Studios and wandering off to
2 look for electronic games?

3 A I just answered your question, I believe.

4 Q Do you know as of December 9, 1981 how far
5 Tiger had come in developing their hand-held electronic game?

6 A Do I know at this point in time?

7 Q Did you know on December 9, 1981?

8 A I will tell you that what I do recall, and I
9 don't know exactly when I spoke to them, was that I was
10 beginning to be disturbed because they were not coming back
11 to me with even pencils of what they were developing.

12 Q Did you communicate that disturbance to Tiger?

13 A At some point I did. I just don't know
14 exactly when.

15 Q Prior to December 9, 1981?

16 A I think I already told you that I don't know
17 exactly when I spoke to them. I don't have that
18 recollection.

19 Q Now the license you granted Tiger, MCA
20 granted Tiger for hand-held electronic games under the
21 "King Kong" trademark was an exclusive license, wasn't it?

22 A I believe so.

23 Q Did you prior to going out and searching for
24 another game to market under the trademark "King Kong"
25 inform your exclusive licensee that you were going to do
26 that?

1 A No. No, I can't say that exactly.

2 Q What can you say?

3 A I can say that I told them I was going to make
4 a trademark application or I had some kind of discussion
5 like that. I did not have a trademark application as yet.
6 I think I discussed it in very brief --

7 Q With whom?

8 A With the people at Tiger Electronics.

9 Q That you were, despite the exclusive license,
10 going out to find a hand-held electronic game which you were
11 going to affix the name "King Kong" to and sell to the
12 Universal tour?

13 A No, I would go into that kind of detail.

14 Q What did you tell them, exactly as you can
15 recall today?

16 A That we based our rights on the movie; that
17 we did not have a trademark application, but we would be
18 making one.

19 Q You told them that on or about September 18
20 or September 9, 1981?

21 A I believe similar, a similar type of
22 discussion. I couldn't give you any kind of exact wording,
23 but it would have been very general; was certainly part of
24 the discussions before we made an agreement.

25 Q So at the time that you were entering into an
26 exclusive license with Tiger to produce hand-held electronic

1 games you advised them that you were going to seek a
2 trademark application for another hand-held electronic game
3 with the trademark "King Kong" affixed?

4 A Well, I'm afraid that with trademarks -- you
5 get the trademark on the name, not on the game. The game
6 is copyright.

7 Q That was not my question.

8 A I know, but I can't answer your question the
9 way you asked it.

10 Q Did you tell your exclusive licensee, Tiger,
11 that you were going to submit an application for a trademark
12 registration of "King Kong" for a hand-held electronic game
13 other than the game that Tiger was going to produce?

14 A No, I wouldn't have said that.

15 Q What did you say to them?

16 A I believe I already answered that question.

17 Q Well, I don't understand your answer.

18 A Well, I don't understand your question.

19 Q Let's see if we can sort this out together,
20 Miss Sifuentes.

21 Did you tell Tiger Electronics that you were
22 going to -- on or about the time you gave them the
23 license -- that you were going to register "King Kong" for
24 a hand-held electronic game other than the game that they
25 were licensed to produce?

26 A I can't answer the question the way you ask

1 it because you are mixing up two different aspects of the
2 law.

3 Q At the time, Miss Sifuentes -- let's see if
4 we can clear this up together -- At the time you submit a
5 product to the trademark office to register a trademark for
6 a particular category, do you in fact submit a product?

7 A To the trademark office?

8 Q Yes.

9 A You are not required to submit a product no

10 Q Do you describe --

11 A I'm sorry. At least you weren't at that point
12 in time. I don't know, the rules have changed.

13 Q We are talking about 1981.

14 A Okay.

15 Q Were you in 1981 required to certify that the
16 product was in commerce?

17 A Yes.

18 Q And in order to do that you had to have sales
19 of the product; is that correct?

20 A A sale, yes.

21 Q A sale. Was the purpose of your sending your
22 letter of December 9, 1981 to Miss Yoshikawa in order to
23 obtain a sale of an electronic hand-held game with the name
24 "King Kong" on it?

25 A I was to sell to her and she was to sell to
26 the general public.

1 Q And was the purpose of that so that you could
2 obtain a trademark?

3 A I would base my -- well, the whole situation
4 as I described it, my sale to her and her offering it for
5 sale to the public, since it was a tour, people from all
6 over the United States came. That, generally was the basis,
7 yes.

8 Q Now Miss Sifuentes, would you turn to the
9 second page of the exhibit in front of you.

10 A Exhibit 115?

11 Q Yes. That's an invoice to the Universal Tour
12 Department for "1 hand-held KING KONG electronic game."

13 A Yes.

14 Q Did you send any more than one hand-held "King
15 Kong" electronic game to the Universal Tour Department?

16 A I don't recall.

17 Q To the best of your recollection did you
18 furnish the Universal Tour Department with any more than one
19 hand-held "King Kong" electronic game?

20 A I really don't recall. It certainly wouldn't
21 have been more than one more.

22 Q So it might have been two?

23 A It might have been.

24 Q Now where did you obtain this hand-held "King
25 Kong" electronic game that you furnished to the Tour
26 Department -- sold to the Tour Department?

1 A I already answered that question.

2 Q Where?

3 A I told you I didn't recall specifically where.

4 Q But at a store?

5 A Yes. I have already answered that question.

6 Q Sometimes you understand things that I don't
7 understand and you will have to forgive me for that.

8 So you purchased it at a store?

9 A Yes.

10 Q And you took it back to your office?

11 A Yes.

12 Q And you prepared a label with "King Kong" on
13 it?

14 A Yes.

15 Q And you affixed it to that game?

16 A Yes.

17 Q And you sold it to the Tour Department?

18 A Yes.

19 Q Did you contact the manufacturer of that game
20 prior to affixing the label to it?

21 A No.

22 Q Do you know who the manufacturer was today?

23 A No.

24 Q Did you have any permission to affix the name
25 "King Kong" to that game?

26 A No.

1 Q Was there some reason, Miss Sifuentes, why you
2 became anxious in December 1981 to obtain a trademark
3 registration for "King Kong" for a hand-held electronic game?

4 MS. EDELMAN: Objection as to form.

5 Q BY MR. KIRBY: You may answer.

6 A I wasn't any more anxious than I generally am
7 about obtaining some kind of trademark protection and giving
8 notice to people.

9 Q Now it's true, isn't it, Miss Sifuentes, at
10 the time you bought this product in some store and put a
11 "King Kong" label on it and sold it to Universal Tour
12 Department that you knew about the game "Donkey Kong"?

13 MS. EDELMAN: I object.

14 Q BY MR. KIRBY: You personally.

15 A I don't recall that at all. I don't believe
16 I did. But I don't recall.

17 Q You don't recall sitting here today whether
18 in December of 1981 at the time you were out in the stores
19 looking for a generic-type electronic hand-held game which
20 you could purchase and without permission put a label, "King
21 Kong," on and sell to the Universal Tour Department that you
22 knew about "Donkey Kong"?

23 A I don't recall that.

24 MR. KIRBY: Please mark as Defendant's 116 a letter
25 from Miss Sifuentes to Mr. Nuanes.

26 //////////////

1 (Defendant's Exhibit 116 was marked
2 for identification by the reporter
3 and is attached hereto.)

4 Q BY MR. KIRBY: Miss Sifuentes, you have in
5 front of you Defendant's 116.

6 A Yes.

7 Q Is that a memorandum you sent to Mr. Nuanes
8 on December 18, 1981?

9 A Yes.

10 Q Is the game "Split Second," which the Xerox
11 copies of photographs appear to be attached the game you
12 purchased at the store?

13 A I don't recall, but it probably was.

14 Q And the label "King KongTM A trademark of
15 Universal City Studios, Inc." is the label you put on the
16 game?

17 A Yes.

18 Q Was Mr. Nuanes the gentleman who you normally
19 requested to obtain trademark registrations for you?

20 A Yes.

21 Q Did you tell Mr. Nuanes that Tiger Electronics
22 had an exclusive license to produce hand-held electronic
23 games under the "King Kong" trademark?

24 A I don't recall specifically saying that, but
25 I do recall that I did have discussions with him, so I
26 assume -- I mean, I think the answer would be yes. I mean,

1 I don't have any specific recollection of conversations with
2 anybody, but I do recall talking to him. And I wouldn't
3 have left it out.

4 Q Did you prior to your memorandum of December
5 18, 1981, advise your exclusive licensee that you were
6 obtaining this registration?

7 A Specifically?

8 Q Yes, specifically.

9 A No.

10 Q Now you asked Mr. Nuanes to do this as soon
11 as possible?

12 A Yes.

13 Q What led you to ask him to do this as soon as
14 possible?

15 A I always asked him to do it as soon as
16 possible.

17 Q So a search of your correspondence file with
18 Mr. Nuanes in connection with trademark registrations would
19 show that you always asked him in every circumstance to do
20 this as soon as possible?

21 MS. EDELMAN: I object to the form of the question.

22 THE WITNESS: Most frequently it would show.

23 Q BY MR. KIRBY: Now Miss Sifuentes, I take it
24 that this process that you engaged in of going out and
25 buying somebody else's product and putting the "King Kong"
26 trademark on it was something you could have done at any

1 time; is that correct? I mean, you could have done it in
2 September as well as December.

3 A I was very busy, but aside from that, yes.
4 I mean, a person can perform everything they are supposed
5 to do every day if they had the time.

6 Q We all know that. But in September you didn't
7 do this.

8 A No.

9 Q You didn't do it in October.

10 A I wrote this memorandum on December the 18th.

11 Q But you didn't go out and make your purchase
12 of somebody else's electronic hand-held game in September
13 or October or November.

14 A I don't recall when I did that.

15 Q You did it sometime between September and
16 December, but you are not sure when.

17 A I am not sure when.

18 Q Other than typing out a label and putting it
19 on this product and sending the letter to Miss Yoshikawa
20 asking her to arrange a sale, was there anything else that
21 you did in order to facilitate the trademark registration
22 of "King Kong" for an electronic hand-held game?

23 A I have to know what you mean by anything else
24 I did.

25 Q Was there any other step that you performed
26 prior to asking Mr. Nuanes to file the trademark

1 registration other than going out and buying the product,
2 getting the label prepared, affixing the label to it and
3 transmitting the product together with an invoice to
4 Universal City Tour?

5 A I don't recall anything else. I don't think
6 so.

7 Q Prior to December 1981 had you in connection
8 with any other MCA property gone out and purchased somebody
9 else's product and put a label on it and arranged the sale
10 and sent it on to the law department to obtain a trademark
11 registration?

12 A Yes, in general I would go out and look for
13 generic products.

14 Q How many times have you done this before?

15 A Many times.

16 Q Give me the time that occurs to you most
17 recently prior to your going out and doing this with respect
18 to "King Kong."

19 A I don't recall.

20 Q Name a product for which you did this.

21 A A product?

22 Q Yes. Excuse me, name a property for which you
23 did this.

24 A Well, possibly "Smokey and the Bandit." I
25 don't recall. Possibly some of the monsters like
26 "Frankenstein." I don't recall which specifically I did

1 what for.

2 Q Now prior to the end of 1981, Miss Sifuentes,
3 did you have any discussion -- I am asking you this as
4 precisely as I can -- Did you have any discussion with
5 anyone at Universal or at MCA or with any of their affiliated
6 companies about the video game "Donkey Kong"?

7 A Prior to the end of December?

8 Q Prior to the end of the year 1981.

9 A I might have.

10 Q When was the first discussion that you clearly
11 recall about the game "Donkey Kong" with anyone at Universal,
12 MCA or its affiliated companies?

13 A I don't recall precisely when that was, but
14 it was obviously after becoming aware of "Donkey Kong" and
15 I am not even sure exactly how I became aware of "Donkey
16 Kong." It may have been through my son.

17 Q How old is your son, Miss Sifuentes?

18 A At that time he was about 14, 15. The right
19 age.

20 Q Not unlikely then. But you personally were
21 aware of the game "Donkey Kong" via your son or some other
22 unspecified source by the end of 1981?

23 MS. EDLEMAN: Objection.

24 THE WITNESS: I'm not really sure exactly when.

25 Q BY MR. KIRBY: But you were certainly aware
26 and others at Universal were aware of the game "Donkey Kong"

1 by the end of January 1982, weren't you?

2 MS. EDELMAN: Objection.

3 THE WITNESS: It's a likelihood, but as I say, I
4 don't have dates in my mind at the moment.

5 Q BY MR. KIRBY: Well, let me ask you to think
6 back to something that's a little bit more recent than that.
7 Do you recall, Miss Sifuentes, meeting with Mr. Gallatin and
8 myself on December 28, 1982, to discuss matters concerning
9 this litigation? ✓

10 A Yes.

11 Q Do you recall that that was in New York City?

12 A Yes.

13 Q Do you recall that that was at a restaurant?

14 A Yes.

15 Q And do you recall your son was present?

16 A Yes.

17 Q Now that was somewhat more recent than
18 January of '82. Do you recall now, thinking back on that
19 meeting, whether or not you told us that Universal was
20 actually aware of "Donkey Kong" in late '81 and certainly
21 by the end of January of '82?

22 A I may have said that because that's like a
23 general recollection. The only thing is I know it was
24 before Toy Fair, but exactly when, I can't tell you. That
25 was a generalization.

26 Q And Toy Fair is held in February of '82?

1 A Yes.

2 Q January, February? When is it held?

3 A It's always in February. Sometimes it's
4 toward the beginning. Sometimes it's toward the end.

5 Q But prior to the Toy Fair of 1982 Universal/
6 MCA knew, as you have just testified, about the game "Donkey
7 Kong"?

8 A Yes.

9 Q And did you discuss the game "Donkey Kong"
10 with people at Universal and MCA?

11 A Yes.

12 Q Who did you discuss it with?

13 A At that time?

14 Q Yes, at that time.

15 A Well, I don't recall. Specifically, of
16 course, I discussed it with Steve Adler, and I may have
17 discussed it with people in the law department.

18 Q Did you as a matter of practice have occasion
19 to have discussions with Mr. Sheinberg?

20 A No.

21 Q That would be completely out of your area?

22 A That's right.

23 Q What about Mr. Newman?

24 A Certainly not at that time.

25 Q Anyone other than Mr. Adler or people in the
26 law department with whom you discussed the game "Donkey

1 Kong"?

2 A No, those are the only people I spoke to.

3 Q Did you make any contact at that time, prior
4 to Toy Fair but in the general period around Toy Fair, with
5 people at Tiger Electronics about the game "Donkey Kong"?

6 A I don't know if I spoke to them. I don't know
7 exactly when I spoke to them. I'm pretty sure I spoke to
8 them in March.

9 Q After Toy Fair, you think?

10 A Yes. I think so.

11 Q At the Toy Fair was Tiger Electronics present?
12 This is the 1982 Toy Fair, I should make the record clear.

13 A I don't think so. I don't recall, but I don't
14 believe they were.

15 Q You don't recall seeing them there in any
16 event.

17 A No.

18 Q Now Miss Sifuentes, I realize that we are
19 asking about events that took place a couple of years ago
20 at least, and I know that sometimes it's very difficult to
21 recall, but I would like you to take your time and reflect
22 as best you can on your testimony to date and the exhibits
23 that have been put in front of you and specifically the
24 exhibit relating to your purchase of an electronic hand-held
25 game and your affixing the label "King Kong" to it and your
26 transmission of it to Universal Tours, your sale of it to

1 Universal Tours for their resale to the public and your
2 request that Mr. Nuanes obtain a trademark registration as
3 soon as possible and ask you whether that, as we sit here
4 today and think as hard as we can about it, refreshes your
5 recollection as to whether you were aware of the game
6 "Donkey Kong" at the time that you were engaged in these
7 activities?

8 A I don't recall specifically exactly when I
9 became aware of "Donkey Kong." My general recollection is
10 that I was not aware of it at the time that I was worrying
11 about making trademark applications.

12 Q Now I again realize, Miss Sifuentes, that some
13 time has passed, and so I would like you to keep your answer
14 to that in mind and if something happens that refreshes your
15 recollection, if I show you something that makes it clearer
16 to you what you knew and when you knew it, we can go back
17 to that. And you are always free to tell me that something,
18 even if I haven't asked you the question, that something has
19 refreshed your recollection.

20 A All right.

21 MR. KIRBY. I would like to have marked as
22 Defendant's Exhibit 117 for identification a document
23 addressed to Miss Sifuentes dated January 18, 1982, with a
24 receipt mark "L.S.S." with a date, which for the life of me
25 I can't read.

26 //////////////

(Defendant's Exhibit 117 was marked for identification by the reporter and is attached hereto.)

Q BY MR. KIRBY: Miss Sifuentes, you have in front of you Defendant's 117. I would like you to take your time and examine this document and then I'm going to ask you whether or not this was a document you recall receiving?

A I don't recall receiving it, but obviously I did receive it. Wait a minute. Where is my stamp? Yes, there it is. There is my stamp. I received it.

Q Miss Sifuentes, you had just had a trademark search covering toys on another category in September with respect to "King Kong." What led you to have this trademark search commissioned?

A I don't recall.

Q Now Miss Sifuentes, to the best of your recollection at this time, about how long was it between the time you commissioned a search and the time you got a response? Was there a typical response period?

A Well, they always asked for two weeks, but usually they got it to me much sooner.

Q So is it likely that if this was dated January 18, you commissioned this sometime at the beginning of January?

A Yes.

Q And you commissioned this search, and again

A001680

1 I'm trying to help, Miss Sifuentes, to have you tie things
2 together in your own memory. You commissioned this search
3 about two and a half weeks after you asked Mr. Nuanes to as
4 soon as possible obtain registration for "King Kong" for a
5 hand-held electronic computer game.

6 A Yes.

7 Q Do you recall sitting here today why you
8 didn't have the search commissioned prior to asking
9 Mr. Nuanes to obtain a registration?

10 A You mean because it says as applied to
11 computer games?

12 Q Yes.

13 A Well, I probably thought at the time that I
14 had already covered it in this large search and perhaps
15 found that it really wasn't covered and was looking for more
16 classes where it might be covered.

17 Q Was there something that happened after you
18 asked Mr. Nuanes to obtain a registration for "King Kong"
19 for an electronic game that led you to institute this
20 search?

21 A I really don't remember.

22 Q Was it the fact that you knew that -- again,
23 I am trying to tie this together for you -- that you knew
24 at the time you commissioned the search that "Donkey Kong"
25 was a game on the market?

26 MS. EDELMAN: I object.

A001681

75
THE WITNESS: I simply don't remember.

Q BY MR. KIRBY: After you obtained this report sometime on or about January 18, 1982, did you review it?

A Yes.

Q Did you discuss it with anyone?

A It was my general practice to. I don't recall. I probably would have sent it down to Mr. Nuanes and asked him if he had any comment.

Q This is getting closer to the present and it is very important, so I am asking you to focus, Miss Sifuentes, not on your general practice, but on whether or not you recall discussing this with Mr. Adler.

A No, I don't.

Q Do you recall discussing it with anyone in Universal or MCA?

A I don't specifically recall, no.

Q Now will you turn to page three of this document, the second page under the cover letter. Do you see the second item there?

A Yes.

Q And that says, "Donkey Kong & Design, 9 Electronic games using a video display."

A Yes.

Q Did you see this report when it came in?

A I am sure I did.

Q Did you call this to the attention of anyone?

A001682

COLEMAN, HAA:

CERTIFIED SHORTHAND REPORTERS.

1 A I don't specifically recall this piece of
2 paper. It doesn't refresh my memory, but I am sure I would
3 have noticed immediately and I am sure I would have discussed
4 it with Mr. Adler and the law department.

5 Q Do you recall today -- I am simply asking for
6 a yes or no answer, not any contents or anything -- Do you
7 recall today the substance of any discussion you had with
8 Mr. Adler?

9 A You mean in a general manner?

10 Q Yes or no, do you recall the substance
11 generally?

12 A Yes.

13 Q What did you discuss with Mr. Adler?

14 A Well, I think I have to invoke the attorney-
15 client privilege there.

16 Q Did you point out to Mr. Adler that there was
17 a popular game on the market under the name "Donkey Kong"?

18 A I think all I can say is that we would have
19 discussed this whole thing, including this, thoroughly.

20 Q I am asking specifically. Did you call that
21 to his attention? Did you say, "Mr. Adler," either referring
22 to this document or not referring to this document, "there
23 is a game on the market called "Donkey Kong"?"

24 A You mean at any time?

25 Q I am talking about at the time you got this
26 report, whether you had it with you or not.

A001683

1 MS. EDELMAN: I will object.

2 THE WITNESS: What's your objection?

3 MS. EDELMAN: Attorney-client privilege.

4 THE WITNESS: Thank you.

5 MR. KIRBY: Is your objection, Miss Edelman, you are
6 instructing the witness not to answer a question as to a
7 fact whether or not she pointed out to Mr. Adler that there
8 was a game on the market called "Donkey Kong"?

9 MS. EDELMAN: I don't believe I can instruct her not
10 to answer at all. She is not my client.

11 MR. KIRBY: Let me make clear to you, Miss Edelman,
12 since you may have rights that you are not aware of, that
13 insofar as you are here representing Universal City Studios,
14 I take it, and I believe the witness takes it, that you are
15 here as Universal City Studios and the holder of the
16 privilege. And that therefore, you are instructing the
17 witness not to answer a question because Universal is
18 asserting its privilege.

19 MS. EDELMAN: Yes, I would say I am asserting the
20 privilege for you and that I am here representing Universal.

21 MR. KIRBY: And telling the witness that she would
22 violate her professional obligations to Universal City
23 Studios by answering that question.

24 MS. EDELMAN: Yes, that's implicit in the objection

25 Q BY MR. KIRBY: Now let me ask the question
26 again and let there be no mistaking that I am simply asking

A001684

1 a fact question, similar to the fact question that I asked
2 before. Did you point out to Mr. Adler that there were
3 electronic games on the market bearing the mark "Donkey
4 Kong"?

5 A Well, I think I have to assert the attorney-
6 client privilege in reference to discussing this search.

7 Q I asked you, and let me make it clear again,
8 with or without regard to having the search in front of you,
9 did you tell Mr. Adler that you had learned via this
10 search or anything else at this time that there was a game
11 on the market with the name "Donkey Kong"?

12 A I did at some point. I don't know if it was
13 at this time.

14 Q Did you discuss this document with Mr. Adler?

15 A Yes.

16 Q Did you discuss this particular part of the
17 contents of this document with Mr. Adler? Yes or no?

18 MS. EDELMAN: I would object.

19 Q BY MR. KIRBY: Yes or no?

20 A I have already answered that question.

21 Q Did you or didn't you?

22 A I'm going to stand on my last answer.

23 Q Well, I would like you to answer it again.

24 A No. What did I say?

25 Q I didn't ask you that question before.

26 A Yes, you did.

A001685

Q Are you asserting the privilege with respect to that?

A Yes.

Q You are?

A Yes.

MR. KIRBY: And that is something that Universal is directing her to do?

MS. EDELMAN: I am asserting the privilege also, yes.

MR. KIRBY: Let me make it absolutely clear on the record that we will ask Judge Sweet to rule on that. This is a matter that under no construction of the attorney-client privilege falls within it.

I'm not asking her whether she gave him advice. I'm not asking her whether she made recommendations to him. I am simply asking her whether in a conversation with Mr. Adler with respect to this search she pointed out to him specifically, not "Cheng Kong," not "Boris is King," but "Donkey Kong."

I request, Miss Edelman, that you, if necessary, can certainly take a recess and discuss this conversation to determine whether or not it comes within the privilege. And I caution you again that not everything that a person engaged in the activities that Miss Sifuentes was engaged in under any construction falls within the attorney-client privilege. And even if she were acting only

1 as an attorney, that that question would not under any case
2 fall within the attorney-client privilege.

3 MS. EDELMAN: Okay. I certainly would like to take
4 a recess. I would also like to say that it is not enough
5 for you to characterize what your question is getting at,
6 whether it is a fact question or what you are asking
7 specifically that takes something out of the attorney-client
8 privilege. I don't believe that that's how the attorney-
9 client privilege is construed; that you can conform the
10 question to a fact question that that doesn't fall within
11 the attorney-client privilege. But I will take a recess.

12 (A brief recess was taken.)

13 Q BY MR. KIRBY: Now Miss Sifuentes, did you
14 point out to Mr. Adler this portion of the Trademark Service
15 Corporation's search report that indicated that "Donkey Kong"
16 had a trademark application filed for nine electronic games?

17 A I am asserting the attorney-client privilege
18 as to my communication with Mr. Adler.

19 MR. KIRBY: Ms. Edelman, is that the position of
20 Universal?

21 MS. EDELMAN: That communication between
22 Miss Sifuentes and Mr. Adler is a communication covered by
23 the privilege, yes, we are.

24 Q BY MR. KIRBY: After receiving this trademark
25 search report, Miss Sifuentes, did you go out and look at
26 the "Donkey Kong" video game?

A001687

1 A Yes, I'm sure I did.

2 Q I know sometimes we tend to insert words
3 where we don't necessarily mean them. My question is: Did
4 you?

5 A Well, my answer is I don't specifically recall
6 exactly when I first went out to see the "Donkey Kong" game,
7 but yes, I did go out and see it and probably after I
8 received this as well.

9 Q Did you take Mr. Adler with you?

10 A Yes, we both went to see the game.

11 Q Did you take anyone else from Universal or
12 MCA with you?

13 A No.

14 Q Did you prepare a report on your observations?

15 A No.

16 Q Did you write a memorandum to anyone reporting
17 on your observation of the game?

18 A I don't believe so.

19 Q Did Mr. Adler, to your knowledge, write such
20 a report?

21 A I don't recall such a report.

22 Q Were you asked by anyone at Universal or MCA
23 to analyze the "Donkey Kong" game, what it was about?

24 A Not specifically. I mean, I wasn't asked to
25 analyze it by anybody?

26 Q Did you make an analysis?

1 A Yes.

2 Q And did you reduce that analysis to writing?

3 A No. Not that I recall.

4 Q Did you communicate that analysis to anyone?

5 A I discussed it with Mr. Adler and with the law
6 department.

7 Q Was that on or about the time you received the
8 results of this search?

9 A It would have been at the time that I first
10 saw the game, whenever that was.

11 Q Which was either before this search or at the
12 time you received the results of the search?

13 MS. EDELMAN: Objection.

14 Q BY MR. KIRBY: I am simply asking if that's
15 correct.

16 A Well, whenever I saw it. It could have been
17 at this time. It might have been before. Whenever I saw
18 it.

19 Q Did you tell the law department what you had
20 observed?

21 A Well, I thought you already asked me that
22 question, basically.

23 Q I may have basically, but sometimes, as you
24 know, lawyers like to ask other than basically.

25 A I can't remember a specific communication, but
26 of course I discussed the game with them.

1 Q Did you purchase a "Donkey Kong" game?

2 A I don't recall that I did.

3 Q Do you recall whether MCA or Universal
4 purchased --

5 A I don't recall that.

6 Q Do you recall whether or not there was a
7 "Donkey Kong" game on the premises of MCA or Universal?

8 A I never had one that I recall.

9 Q Do you recall seeing one on the premises?

10 A I don't recall any hand-held game. I went to
11 arcades.

12 Q Do you recall seeing an arcade game on the
13 premises at MCA or Universal of the "Donkey Kong" game?

14 A No.

15 Q Did you see other arcade games on the premises
16 of MCA or Universal?

17 A I don't recall seeing any.

18 Q Did you attend the Toy Fair in 1982?

19 A Yes, I did.

20 Q Who else from MCA attended?

21 A Mr. Adler.

22 Q Anyone else from Universal or MCA attend that
23 Toy Fair?

24 A Not that I know of.

25 Q Did MCA or Universal have an exhibit at that
26 Toy Fair?

Q It's a single digit.

A It would have been the result of discussion.

Q It would have been the result of discussion with whom?

A Mr. Adler.

Q Were you directed to seek a termination of the Tiger agreement prior to the time the Coleco agreement was entered into?

A You mean in relation to the Coleco agreement? You mean because of the Coleco agreement? Is that what you are asking me?

Q At the time of the Coleco agreement.

A At the time? You mean during that time?

Q Yes.

A Well, I am having a problem with whether that is a privileged communication, and I think I'm going to say that it is and I will not answer unless directed to do so by Miss Edelman.

MS. EDELMAN: I am not going to direct you to answer.

THE WITNESS: Are you claiming the privilege?

MS. EDELMAN: I am not even sure I know what the question was. Would you like to rephrase the question? Or restate it.

Q BY MR. KIRBY: Let me ask you this, Miss Sifuentes, were you directed, advised or asked,

1 whichever word you want to use, to seek a termination of the
2 Tiger license agreement in connection with the Universal
3 negotiations with Coleco of an agreement?

4 A No.

5 Q Were you asked to see if the Tiger agreement
6 could be terminated in order to facilitate Universal's entry
7 into the Coleco agreement?

8 A I don't recall anything like that, no. I mean,
9 I don't recall that.

10 Q Miss Sifuentes, let me ask you to go back a
11 few months. Do you recall meeting at the Toy Fair in New
12 York in February 1982 with a potential licensee of "King
13 Kong" for digital watches?

14 A Yes.

15 Q Who was that?

16 A It was a company with two names. I don't know
17 which was the parent. Dunbar Electronics and Collins.

18 Q Did you meet with one person or more than one
19 person?

20 A I believe just one.

21 Q Was anyone with you when you met with this
22 person?

23 A Mr. Adler.

24 Q And what was this representative of this
25 company seeking from Universal?

26 A A license for "King Kong" for electronic

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1 watches, digital watches.

2 Q Did you and Mr. Adler discuss with that
3 licensee at his request whether or not Universal had any
4 right to "Donkey Kong"?

5 A Yes, we did...

6 Q And what did you tell that licensee, potential
7 licensee, excuse me?

8 MS. EDELMAN: Excuse me, can I just confirm that you
9 asked a question of did you have any right in "Donkey Kong"?

10 MR. KIRBY: That's correct.

11 THE WITNESS: I don't recall specifically exactly
12 how we discussed it. He had a trademark search and was
13 aware of "Donkey Kong" and we certainly said we had rights
14 in "King Kong" and the movie and I think I simply deferred
15 to discussions with my attorneys.

16 Q BY MR. KIRBY: Did that licensee ask you
17 whether or not if he obtained a license from you, you would
18 protect him from any action by Nintendo based on "Donkey
19 Kong"?

20 A I believe that he did.

21 Q And what did you tell him?

22 A I told him that I would have to ask my
23 attorneys.

24 Q Did either you or Mr. Adler, to the best of
25 your recollection, tell this gentleman -- I say gentleman.
26 I don't know if he was a gentleman.

1 A Yes.

2 Q -- that "donkey Kong" was an infringement on
3 "King Kong"?

4 A I don't believe that I would have made any
5 statement of that sort to this gentleman.

6 Q Did you tell this man that Universal intended
7 to take action against Nintendo?

8 A I'm sure I didn't say that. I would have said
9 that we would of course take action against anyone who
10 infringed against any rights we had in "King Kong."

11 Q Did this gentleman discuss with you what the
12 "Donkey Kong" game was about?

13 A Well, not the specific details of the game,
14 but I generally recall that he felt that it was the "King
15 Kong" story.

16 Q Did he tell you that he thought that this was
17 an infringement on the "King Kong" mark?

18 A I don't recall that he specifically said that,
19 but I do recall that he certainly wanted us to be able to
20 protect him from "Donkey Kong."

21 Q Did you have more than one discussion with him
22 at the Toy Fair?

23 A No, just one at the Toy Fair.

24 Q Did you have discussions with him after the
25 Toy Fair?

26 A I know that I had phone conversations with him.

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1 I think one before to set up the meeting and one or two
2 after. I am not sure.

3 Q And in the phone conversation before, did he
4 discuss with you what his interest was in having a meeting?

5 A He said he wanted to license "King Kong."

6 Q Did he discuss it any further with you? Did
7 he ask you about "Donkey Kong" in the telephone conversation?

8 A No, he didn't.

9 Q In the telephone conversation after the
10 meeting -- Was there one or more than one after the meeting?

11 A I don't recall. There may have been more than
12 one.

13 Q Do you recall the substance of what you
14 discussed with him?

15 A Generally, at some point I told him we weren't
16 interested.

17 Q You told him you were not interested?

18 A We were not interested in licensing him.

19 Q How soon was this after the Toy Fair?

20 A I don't really recall.

21 Q Was it a matter of days?

22 A I seem to recall that there was difficulty
23 getting ahold of him. That's why I don't recall. So it may
24 have been a couple of weeks. It might even have been a
25 month or more.

26 Q But you eventually did reach him and discuss

1 things with him further?

2 A Yes.

3 Q And during that conversation, did you tell him
4 you weren't interested or was it a subsequent conversation?

5 A Oh, after I told him we weren't interested,
6 they were not anymore.

7 Q I am not clear. In the conversation when you
8 eventually reached him after the Toy Fair, did you tell him
9 that you weren't interested or did you have further
10 discussions after the Toy Fair about the possibility of his
11 obtaining the license prior to telling him that you weren't
12 interested?

13 A Well, I don't know if I had more than one
14 phone conversation with him after, so I have to say I don't
15 recall.

16 Q As I recall, you told him at the Toy Fair on
17 questions about whether or not you could protect him, you
18 would have to consult with your law department; is that
19 correct?

20 A Yes.

21 Q Did you consult with the law department prior
22 to the time after the Toy Fair but prior to the time you
23 eventually reached him by telephone?

24 A I don't recall specifically.

25 Q Did you have a discussion with the law
26 department about the question raised at the Toy Fair by this

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potential licensee with respect to "Donkey Kong"?

A Yes, I did.

Q When you told this gentleman that you weren't interested, did you tell him anything with respect to "Donkey Kong"?

A I don't recall specifically, but I am sure I would have avoided it.

Q Did you answer his question as to whether or not Universal could protect him?

A I don't believe so.

Q Did you discuss with this potential licensee the monetary terms by which a license would be available to him?

A We may have.

Q I'm asking whether or not you recall whether he discussed it.

A I don't recall. I just don't recall.

Q Do you recall the man's name?

A No, I don't.

Q But the company was Dunbar?

A Dunbar Electronics and Collins; either it was the parent or a subsidiary or something like that. I don't remember which one actually sold the watches.

Q But were they in the business of manufacturing watches?

A Well, like most people, they had them

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1 manufactured.

97

2 Q Were they in the business, to your knowledge,
3 of manufacturing character watches or trademark watches,
4 novelty watches?

5 A I recall in general that he did have at least
6 one other license, character license, but I don't recall
7 specifically what it was, but that's my general recollection.

8 Q Did they do anything other than sell watches?

9 A I really don't know.

10 Q Was there a reason communicated to him as to
11 why Universal was not interested in granting him a license?

12 A I'm sure he pressed for one. I was very vague.

13 Q Do you recall whether or not you gave him a
14 reason?

15 A Just that we weren't interested at this time
16 in that type of product.

17 Q What was the reason that Universal did not
18 wish to license him?

19 A Well, I think that comes under attorney-client
20 privilege. It would have been discussions with the law
21 department.

22 Q Then let me be clear. In other words, you had
23 had discussions with the law department prior to telling him
24 that you weren't interested?

25 A Yes.

26 Q Was the reason anything to do with the

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finances of Collins or Dunbar?

A No, I don't think I had gotten a lot of information then on their finances.

Q Was it anything to do with their ability to promote the product?

A No, I hadn't gotten into that.

Q So it was entirely on the basis of your discussions with the law department that you chose not to go ahead?

MS. EDELMAN: Objection. Just for form, not for privilege.

THE WITNESS: Yes.

Q BY MR. KIRBY. And I take it that those discussions had to do with the questions raised at the Toy Fair by the potential licensee, the discussions with the law department had to do with that subject matter?

A I think that I have to assert the attorney-client privilege there. Do you think so?

MR. KIRBY: Let me state for the record because I think this is getting far, far beyond the pale.

I am entitled Ms. Edelman, and if you want, I will read into the record a series of cases to ask about the subject matter of the conversation.

MS. EDELMAN: I think generally.

MR. KIRBY: So that's what I am asking. I am asking generally.

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1 THE WITNESS: You don't object to answering that
2 question generally?

3 MS. EDELMAN: I don't know. It would have to be a
4 general question, though.

5 MR. KIRBY: I am asking if the subject matter of the
6 discussions with the law department that she has been
7 testifying about was the questions raised at the Toy Fair
8 about the general relationship between "Donkey Kong" and
9 "King Kong." The substance.

10 Q I am not asking what the advice was or
11 anything. Just was that the subject matter?

12 A Do you want to assert?

13 MS. EDELMAN: No.

14 THE WITNESS: Yes.

15 Q BY MR. KIRBY: At that time, that is, February
16 1982, was Universal still putting out its newsletter?

17 A I couldn't say for sure. We may have stopped
18 by that time.

19 Q At that time, February 1982, when you declined
20 to grant a license to Collins/Dunbar for a "King Kong"
21 digital watch, was "King Kong" still generally available for
22 license?

23 A I don't know what you mean by "still generally
24 available." I find that difficult.

25 Q Well, you declined to grant the digital watch
26 license. At that time was Universal still merchandising
1

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1 "King Kong"? Was "King Kong" even temporarily withdrawn
2 from the products that you were generally going to make
3 available for license?

4 A Well, we weren't licensing it. We didn't have
5 to go through any formal withdrawals. There was nobody to
6 withdraw from.

7 Q Was there a decision made by Universal at that
8 time, at that period not to license "King Kong" if someone
9 made a request?

10 A I'm having problems with that question, and
11 I cannot answer it in terms of Universal. My problem is
12 because I don't speak for all of Universal. I mean, I
13 worked for Merchandising Corporation of America.

14 Q I apologize. I will amend my question.

15 A I am having problems. Well, I'm going to
16 assert attorney-client privilege and I will not answer it
17 unless directed to do so by -- Do you claim the privilege?
18 I am very confused at this point. I find it confusing, just
19 that particular question.

20 Q I am sorry.

21 A I just explained that that question, because
22 of all the circumstances that I have to think about, I just
23 don't know if I can answer that one.

24 Q I am simply asking as a matter of fact at this
25 time, February 1982, had a decision been made not to license
26 "King Kong" by MCA? I'm taking your amendment.

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1 MS. EDELMAN: I have no idea whether the privilege
2 is applicable in this situation.

3 MR. KIRBY: Sandra, I share your confusion because
4 what I am asking about is, in effect, a policy, and if the
5 policy was at this time not to license "King Kong," I'm
6 simply asking yes or no, was that the policy. And that
7 can't be covered by the attorney-client privilege. I am not
8 asking what went into it.

9 MS. EDELMAN: We can't eliminate a subject matter
10 as a general matter.

11 THE WITNESS: So are you not going to assert the
12 privilege?

13 MS. EDELMAN: Not in respect to that question.

14 THE WITNESS: As regard to MCA -- I mean,
15 Merchandising Corporation of America, Inc., we had made the
16 decision that we would not license "King Kong."

17 Q BY MR. KIRBY: And was there a time when that
18 policy was reversed? I am talking about obviously prior to
19 the time that you left MCA.

20 A I received no instruction to license "King
21 Kong" after that decision was made in the confines of
22 Merchandising Corporation of America.

23 Q Was that decision, to your knowledge, made by
24 Mr. Adler?

25 A Which decision?

26 Q The decision to not license "King Kong." You

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1 confined your answer to Merchandising Corporation of America.

2 A Right.

3 Q Was that made by Mr. Adler?

4 A Yes.

5 Q And you jointly --

6 A Yes, jointly.

7 Q Did anyone else participate in making that
8 decision?

9 A The law department.

10 Q Mr. Sheinberg?

11 A Not that I know of.

12 MR. KIRBY: Let me ask to have marked as Exhibit 119
13 a two-page document dated May 5, 1982, from Randy Rissman
14 to -- I apologize, a one-page document from Mr. Rissman to
15 Miss Sifuentes.

16 (Defendant's Exhibit 119 was marked
17 for identification by the reporter
18 and is attached hereto.)

19 Q BY MR. KIRBY: Miss Sifuentes, do you recall
20 receiving this letter?

21 A Yes.

22 Q Did it enclose the material for your review?

23 A I don't recall. I know at some time I did get
24 it. I don't know if it came when it was supposed to.

25 Q Did you review the material when it came?

26 A Yes.

1 Q Did you discuss the material with anyone at
2 MCA or Universal?

3 A Yes.

4 Q Who did you discuss it with?

5 A Mr. Adler.

6 Q Anyone else?

7 A Well, I don't recall. I might have sent it
8 to the law department. I just don't recall.

9 Q To the best of your recollection now, thinking
10 back on that material, did the material indicate that the
11 Tiger game resembled "Donkey Kong"?

12 A My general recollection is what they sent us,
13 first it was very hard to tell what the game was. And we
14 really had to go through a lot to get them to show us the
15 game.

16 Q But to the extent that you could determine what
17 it was about, did it resemble "Donkey Kong"?

18 A Well, I couldn't tell from what they sent
19 initially. But I recall that the artwork, which was pretty
20 much all they sent, the packaging and things like that was
21 not acceptable.

22 Q When you say, "not acceptable," what do you
23 mean? Not acceptable because it resembled "Donkey Kong"?

24 A My general recollection, because I don't have
25 a specific one, is that yes, it did.

26 Q Now the date of that letter is?

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A May 5th, 1982.

MR. KIRBY: I would like to have marked as Defendant's Exhibit 120 for identification a mailgram from Loretta Sifuentes to Randy Rissman dated May 8, 1982.

(Defendant's Exhibit 120 was marked for identification by the reporter and is attached hereto.)

THE WITNESS: I have read it.

Q BY MR. KIRBY: Miss Sifuentes, was this telex drafted by the law department at Universal?

A I don't recall specifically. I am sure I drafted the first and that it was revised by various people.

Q What people revised it, to your knowledge?

A I don't remember specifically. I think it may have been revised by Mr. Hadl.

Q To your knowledge, was Mr. Hadl in the law department?

A No, he wasn't.

Q So it was revised by Mr. Hadl. Was it revised by anyone in the law department?

A I don't recall that.

Q What about Mr. Adler?

A Oh, yes, always Mr. Adler.

Q So you and Mr. Adler prepared it and sent it to Mr. Hadl for his revision?

A I'm not really sure of that, but I think we

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1 did.

2 Q But Mr. Hadl, in any event, saw this prior to
3 the time you sent it out?

4 A I'm not really sure, but I believe that he did.
5 Generally.

6 Q In the process of drafting this, did you
7 discuss its contents with anyone?

8 A Yes. I mean, Mr. Adler, probably Mr. Hadl.

9 Q What were the substantial similarities between
10 "Donkey Kong" and "King Kong" in the materials submitted by
11 Tiger?

12 A Well, I think the material submitted was
13 primarily packaging artwork. Is that what it says? I don't
14 remember specifically, but my general recollection was that
15 it was very close to the same artwork that was on the arcade
16 games.

17 Q Now at the time this telegram was drafted and
18 sent, you knew, did you not, that Coleco and Universal were
19 having discussions about entering into an agreement? This
20 being May.

21 A I believe so.

22 Q Did you discuss that agreement with Mr. Hadl
23 at this time, at the time you were drafting this, the
24 Coleco agreement?

25 A Only -- How do you mean that?

26 Q Simply, did you discuss it?

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1 A Did I discuss this or the Coleco agreement?

2 Q Did you discuss this telex and the Coleco
3 agreement with Mr. Hadl on or about May 8, 1982, at the time
4 this was being sent?

5 A Probably.

6 Q Was the decision to terminate Tiger made in
7 part at least because of the Coleco agreement that was under
8 discussion?

9 A The decision to terminate was actually made
10 much earlier than that, but I don't recall exactly how the
11 Coleco agreement was discussed in relation to this.

12 Q When you say it was made much earlier, how
13 much earlier?

14 A Well, we were not receiving any communication
15 from them, that is, Tiger Electronics, and I would say
16 probably a couple of months earlier.

17 Q Even prior to the time you received their
18 artwork on May 5th, on or about May 5th, '82?

19 A We suspected what they were doing just by
20 general deduction or induction, whichever it is.

21 Q I'm sorry, what did you suspect by deduction
22 or induction? I am never sure which is which either.

23 A That they were going to copy "Donkey Kong."

24 Q And it was on that basis you made a decision
25 several months earlier to terminate them?

26 A That if they did, yes.

1 Q And so when you received their artwork, that
2 just confirmed what you had already deduced?

3 A Yes.

4 Q Was there any basis for that deduction or
5 induction, if you will forgive the compound questions since
6 I am not sure which is which?

7 A Well, the popularity of the game, the "Donkey
8 Kong" game. The fact that no one other than the costume
9 people, other than the people in the electronics area were
10 interested in "King Kong" the movie because we had talked
11 to several people about "King Kong" earlier on.

12 Q And they weren't interested?

13 A No.

14 Q So it was only in the electronic area, like
15 digital watches even, that people expressed any interest?

16 A That's right.

17 Q Your testimony was that "we" induced or
18 deduced. Does that refer to you and Mr. Adler?

19 A Yes.

20 Q Anyone else?

21 A No.

22 Q Did you communicate that induction, deduction
23 to anyone else at MCA or Universal?

24 A I believe I communicated it to the law
25 department.

26 Did you communicate it to Mr. Hadl?

1 A No, that was long before Mr. Hadl came into
2 the picture.

3 Q So it was several months at least prior to
4 this?

5 A A couple of months at least, yes.

6 Q Before the Toy Fair?

7 A At the time, I would say around the time that
8 we met with the people from Dunbar and Collins.

9 Q Let me show you what's been previously marked
10 as Defendant's Exhibit 11 for identification, which is a
11 letter from a law firm, Dressler, Goldsmith, to Mr. Hadl
12 dated May 18, 1982.

13 Have you seen this document before, Defendant's
14 Exhibit 11?

15 A I believe so.

16 Q To your knowledge, Miss Sifuentes, did MCA or
17 Universal respond to this letter?

18 A In writing?

19 Q In writing.

20 A I don't recall.

21 Q I refer you specifically to page two of this
22 letter, the first full paragraph which begins, "Tiger is
23 perplexed concerning MCA's claimed right to the ownership
24 and control of the title 'King Kong' in the United States."

25 Did Universal or MCA furnish Tiger with any
26 information about Universal's claimed right to "ownership"

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1 and control of the title 'King Kong' in the United States"?
2 A You mean written information?

3 Q Yes, did you furnish them anything in writing
4 with respect to that?

5 A Not that I recall.

6 Q Did you orally furnish them any information
7 with respect to the claimed right?

8 A Nothing other than what I have previously
9 stated.

10 Q Refresh my recollection. What did you
11 previously state?

12 A That we had the rights in the movie, the
13 original movie.

14 Q Is it your recollection that in response to
15 the May 18 letter, that Tiger was orally advised that
16 Universal had rights in the original "King Kong" movie?

17 A Yes.

18 Q Did you communicate that to them?

19 A I'm sure I did.

20 Q Did you communicate anything else to them with
21 respect to Universal-claimed rights?

22 A Anything else?

23 Q Anything else other than what you just said,
24 the rights to that movie.

25 A I don't recall anything else.

26 Q Did you discuss with them litigation between

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1 RKO and Universal and Dino DiLaurentiis?

2 A I may have briefly touched on it.

3 Q Are you familiar with that litigation?

4 A Just vaguely.

5 Q What did you tell them about that litigation?

6 A That as a result of it we had merchandise
7 rights.

8 Q Did you discuss with them the agreements with
9 Major Cooper?

10 A No, I didn't discuss anything in detail.

11 Q Are you familiar with the agreement with
12 Major Cooper?

13 A I never got into reading all of that. It was
14 too long.

15 Q Did they ask for anything in writing
16 certifying that Universal did in fact own or control the
17 title "King Kong" in the United States?

18 A Did they ask for?

19 Q Yes.

20 A I don't recall what they asked for.

21 Q Did you furnish them anything?

22 A Only the contract.

23 Q Only the original September contract?

24 A Yes.

25 Q But you didn't furnish them anything around
26 May 18, 1982?

1 A I don't recall doing anything of that sort.

2 Q Now in that paragraph they also point out that
3 numerous companies unrelated to MCA have obtained federal
4 registrations for "King Kong."

5 Did you discuss with them those numerous
6 companies with federal registrations for "King Kong"?

7 A I don't recall discussing those with them, no.

8 Q Did they ask you whether Universal planned to
9 take any actions with those companies?

10 A That was the general question that I remember,
11 yes.

12 Q What did you tell them?

13 A To stick to their license.

14 Q When they asked you whether or not Universal
15 was going to take any action against the companies that had
16 federal registrations for "King Kong"?

17 A In classes other than the class we were in.

18 Q And what did you say to them?

19 A I don't recall specifically what we said, but
20 we felt that was outside of what we were discussing with
21 them, namely, their contract. We didn't discuss it, in
22 other words. We didn't respond.

23 Q You refused to discuss it with them?

24 A Yes.

25 Q Did they ask for any assurances other than
26 those you have already described that Universal in fact had

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1 the ability to grant the license that they granted?

2 A They asked that question.

3 Q And what did you say to them?

4 A The same thing that I already indicated, that
5 we had the rights to the original movie.

6 Q Did you make clear to them that you didn't have
7 the rights to the stills or, in effect, the depictions in
8 the original movie?

9 A The stills?

10 Q The stills.

11 A I had done that in the beginning.

12 Q You had done that in the beginning?

13 A Yes.

14 Q Did you reiterate that in May of 1982 that
15 whatever they did couldn't look like the original movie?

16 A Oh, no, that isn't the case. They simply
17 couldn't use stills from the original movie.

18 Q Did you tell them that their gorilla had to
19 look different than the original movie?

20 A No.

21 Q Let me show you what has been marked previously
22 as Defendant's Exhibit 12 for identification, which is also
23 a letter from this law firm to Mr. Hadl and also dated May
24 18, 1982, and ask if you have seen that letter before?

25 A I believe that I have.

26 Q Did you discuss the contents of this letter ;

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1 Q Did you discuss with them whether or not
2 Coleco would be displaying on its package an indication that
3 it was operating under a license from Universal?

4 A I don't recall.

5 Q Did you discuss with them, and when I say you,
6 I mean broadly Universal/MCA, discuss with Tiger at that
7 meeting what it is that Coleco would be marketing?

8 A I think we did.

9 Q Did you show them the Coleco video game?

10 A No.

11 Q Did you tell them that they had to be sure
12 that their game was not similar to the Coleco video game?

13 A We told them -- I don't remember saying that
14 their game couldn't be like the Coleco game, but they could
15 not have a "Donkey Kong" game and the Coleco game was a
16 "Donkey Kong" game.

17 Q Was Tiger required under its agreement with
18 Universal/MCA to display on its packaging that it was
19 operating under agreement with MCA?

20 A Yes.

21 Q To your knowledge, was Coleco required to do
22 that?

23 A I don't know.

24 Q Was it Universal's general practice to require
25 licensees to indicate on their packaging that they were a
26 licensee of Universal or MCA?

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A Yes.

Q Do you recall any product that was produced under a license of MCA or Universal that did not have such an acknowledgement on its package?

A I don't recall any.

Q Now at that meeting that took place after May 18, 1982, the date of Defendant's Exhibit 11 and 12, did Universal/MCA inform Tiger that it was having discussions with Nintendo?

A I didn't make any -- I only know that I didn't. I don't know about anybody else.

Q Did you know at that meeting that representatives of Universal and Nintendo had met?

A I don't recall.

Q Is there anything else that you recall that happened at that meeting that we haven't discussed?

A No. Generally, that was it.

Q Well, tell me how that meeting concluded? Was there an agreement at the end of that meeting?

A There wasn't a final agreement, but there was a general understanding, I think.

Q What was that general understanding?

A That they would change their packaging and they would change their product and that various restrictions would be made to the agreement. Some concessions would be made on our part in some way, maybe enlarging the scope of

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1 what they could do or where they could sell or what they had
2 to pay. I am not quite sure, really.

3 Q And after that meeting, was there a subsequent
4 meeting to discuss an amendment to their license?

5 A I don't recall what was discussed, exactly
6 when or where we discussed the final amendments. I believe
7 they were primarily discussed with Mr. Hadl. We did have
8 additional meetings either at Sears or Penneys, so we could
9 take a look at what they were actually producing with respect
10 to the game.

11 Q You had more than one additional meeting after
12 this meeting you have just been testifying about?

13 A At least one and certainly over the phone, at
14 least one or maybe two. But at least one.

15 Q Did anyone at the meeting you have been
16 testifying about or at any of these subsequent meetings tell
17 Tiger that an agreement had actually been entered into with
18 Coleco?

19 A I don't recall specifically. Someone may
20 have.

21 Q Did anyone tell Tiger that Universal was going
22 to file suit against Nintendo?

23 A I just don't recall that.

24 Q Did anyone at that meeting discuss whether or
25 not Universal was going to seek a preliminary injunction
26 against Nintendo?

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1 A I don't recall.

2 Q Did anyone at that meeting discuss whether or
3 not Universal was going to sue Coleco?

4 A They may have.

5 Q But you don't recall?

6 A No.

7 Q Was there any discussion at any of these
8 meetings as to whether or not Nintendo was going to sue
9 Tiger or Universal?

10 A Well, Tiger wanted to be protected if they were
11 sued.

12 Q And was there an agreement made to protect
13 Tiger?

14 A Only in terms of the contract.

15 Q What did Tiger say in terms of its concern
16 about being sued by Nintendo?

17 A I don't recall specifically. In general, their
18 claim was that "Donkey Kong" and "King Kong" were the same
19 and that if we didn't protect them, that they might be sued.

20 Q Who made the decision to indemnify Tiger?

21 A When? Initially, in the initial agreement,
22 I mean, it's part of our policy.

23 Q Let me show you what's been previously marked
24 as Defendant's Exhibit 14 for identification. Were you
25 involved in negotiating this agreement?

26 A In a peripheral way.

A001716

1 Q BY MR. KIRBY: What did Miss Edelman tell you?

2 A "That she cannot represent me in terms of the
3 attorney-client privilege; that she would assert it if she
4 could for Universal and would I like to meet with her and I
5 said no. Would Mr. Adler like to meet with her, and I said
6 no. And then we said, "Good-bye. It was nice to talk to
7 you."

8 Q Did you discuss the substance of any of your
9 testimony with Miss Edelman?

10 A No.

11 Q Did she ask you any questions as to whether
12 or not you would be testifying about certain subjects?

13 A No. She said you might ask some questions
14 about Tiger.

15 Q Anything else?

16 A No. Not that I can remember. It was a very
17 short conversation. She said she would have to tell you that
18 I talked to her.

19 Q Now Miss Sifuentes, did you resign from
20 Universal or did Universal terminate -- I say Universal, I
21 mean MCA -- Did they terminate you?

22 A I was terminated.

23 Q Were you given a reason for your termination?

24 A No.

25 Q Did you discuss your termination with anyone
26 at MCA?

1 A How do you mean that?

2 Q Other than being told that you were
3 terminated -- Let's do it this way: Who told you that you
4 were terminated?

5 A Mr. Adler.

6 Q Did he tell you why you were terminated?

7 A No.

8 Q Did you ask him why you were terminated?

9 A No.

10 Q Did you know why you were terminated?

11 A Yes.

12 Q Why were you terminated?

13 A Well, I don't feel that I can explain that
14 because I think that an awful lot of that has to do with
15 attorney-client privilege.

16 Q Well, I, of course, respect your assertions
17 of the attorney-client privilege and have endeavored to do
18 so, but you also understand it is important for me to
19 understand the subject matter.

20 Now was the subject matter of your termination
21 and which you say is protected by the attorney-client
22 privilege, anything to do with your activities in any way
23 with respect to "King Kong"?

24 A Well, I would say primarily it was because I
25 did not get along with Mr. Newman.

26 Q So that the subject matter of your termination

Now, you met with Mr. Fairhurst last night?

A. Yes.

Q. For approximately how long?

A. About one hour and 45 minutes.

Q. Was anyone else present at that meeting?

A. No.

Q. Are you represented by counsel in connection with this deposition?

A. Mr. Fairhurst is representing me.

MR. FAIRHURST: Well, Universal is representing Ms. Sifuentes for the purpose of instructing and advising, I should say, on the attorney-client privilege. And Ms. Sifuentes has agreed that if I advise her as to matters relating to your questions that touch on the attorney-client privilege, and I tell her that that privilege has been waived, she will so testify.

MR. KIRBY: Thank you, Mr. Fairhurst.

Q. Ms. Sifuentes, I was just trying to establish for the record whether or not you have been advised in connection with this deposition by a personal attorney.

A. I have been -- only in the sense that -- to cooperate with Mr. Fairhurst and to be as truthful as I can be.

Q. Thank you.

I take it the answer to the question is yes, you have been advised by a personal attorney?

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A. Yes.

Q. What is that attorney's name?

A. His name is Michael White.

Q. Michael White. Was Mr. White present at the meeting last night between you and Mr. Fairhurst?

A. No.

Q. During the course of that meeting, did Mr. Fairhurst show you a letter from me to him relating to certain areas which may be covered in your deposition today?

A. I believe he did.

Q. Did he show you any documents other than the documents you have previously testified to here today?

A. He may have. I don't remember everything that he showed me.

Q. Did you discuss with Mr. Fairhurst what your testimony would be today?

A. Yes.

Q. Now, in the course of one of your answers today, Ms. Sifuentes, you indicated that Mr. Fairhurst had shown you a memorandum from Mr. DiMuro.

I'm going to ask the reporter to mark as Defendant's Exhibit 132 a copy of the memorandum from Mr. DiMuro to Mr. Sheinberg dated June 18, 1980, and then I will ask you to look at that document and tell me whether that is the memorandum to which you referred.

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1 Q. So you were employed by Universal during the
2 period that Universal was engaged in litigation with RKO and
3 others with respect to "King Kong".

4 MR. FAIRHURST: I have to object. She was employed by
5 Merchandising Corporation of America and you are using
6 Universal. I'm not making a point of it, but if we're trying
7 to be accurate here.

8 THE WITNESS: I was actually employed by MCA, Inc.
9 For the first four years, I was directed to work for
10 Universal City Studios, Inc. and the remaining years I worked
11 for Merchandising Corporation of America, Inc.

12 Q. BY MR. KIRBY: So until about 1976, you as an
13 employee of MCA, Inc. were directed to work for Universal
14 City Studios, and then from 1976 until the time you left the
15 employment of the parent MCA, you were assigned to work for
16 Merchandising Corporation of America, Inc; is that correct?

17 A. That's correct.

18 Q. So you were an employee of MCA during the period
19 when Universal City Studios was in litigation with RKO and
20 others with respect to "King Kong"?

21 A. Yes.

22 Q. Did you play any part in that litigation?

23 A. No.

24 Q. Did you receive any documents generated by that
25 litigation?

26 A. From time to time, very infrequently, the law

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1 department would send memos around that -- for all of the
2 attorneys to read. Those were very general.

3 Q. What did these documents do?

4 A. They were intended to keep people somewhat
5 informed.

6 Q. Of the progress of the litigation?

7 A. Yes.

8 Q. Did you become aware that the litigation with
9 RKO and others had been settled?

10 A. Yes.

11 Q. Were you furnished a copy of any papers relating
12 to that settlement at about the time of the settlement?

13 A. The only -- I don't really recall. The only way
14 I would have seen anything is if something had been put in
15 the inter-office mail for all the attorneys.

16 Q. Were you furnished a copy in or about the end of
17 1976 of an agreement between Universal and a Mr. Cooper?

18 A. I don't recall.

19 Q. Prior to June 18, 1980, to the best of your
20 recollection, what did you know about Universal's claim of
21 rights to "King Kong"?

22 A. Well, all that I knew that I recall now was that
23 at one point, MCA had won some kind of point with regard to
24 the fact that the "King Kong" story might be in the public
25 domain.

26 And then it was reversed or something to that

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1 A. Yes, we would.

2 Q. Did you discuss with Mr. Adler whether there
3 were any restrictions on Merchandising Corporation of
4 America's right to license "King Kong"?

5 A. I don't recall specifically anything like that.

6 Q. Now, in your prior deposition, you testified
7 that after you read this memorandum, you called the law
8 department.

9 A. Yes.

10 Q. And I asked you why you called the law
11 department, and you testified, to talk to them about the
12 contents.

13 Now I am going to ask you what you said to the
14 law department when you called them.

15 MR. FAIRHURST: Would you make the record a little
16 clearer, because the law department is a lot of people. You
17 can ask her who she spoke to. I think that might help.

18 MR. KIRBY: I will certainly accept that amendment.

19 Q. Who did you call in the law department?

20 A. Mr. DiMuro.

21 Q. Did you speak to anyone other than Mr. DiMuro
22 about this memorandum in the law department?

23 A. I don't recall speaking to anyone else.

24 Q. What did you say to Mr. DiMuro?

25 A. I don't remember specifically.

26 Q. Tell me generally what you remember.

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1 A. Generally, I asked if we indeed did have the
2 rights to merchandise "King Kong," and what that meant.

3 And it was a very brief conversation, and I
4 tried to make clear to Mr. DiMuro that I was really relying
5 on him, because I knew this was a very complicated case with
6 volumes and volumes of documents. And that I was going to
7 rely on him. I was not going to do any backup work. And
8 after a brief conversation, he indicated that I should and
9 could go ahead with ~~merchandising~~ *licensing the property* "King Kong."

10 Q. Did you discuss with Mr. DiMuro whether there
11 were any restrictions on Merchandising Corporation of
12 America's ability to license "King Kong"?

13 A. Briefly, yes.

14 Q. And what did he say to you?

15 A. All that I recall at the moment was -- well,
16 that we didn't have the Dino DeLaurentiis movie, we couldn't
17 use any pictures from that; we did not have the old RKO
18 movie. For that we would need their cooperation. And
19 otherwise, I don't recall anything else.

20 Q. Did you ask him explicitly what portions of the
21 "King Kong" property Merchandising Corporation of America was
22 entitled to license, in his view?

23 A. Well, we didn't have a long conversation, but
24 what I do recall is that at the end, I asked him, "Well, does
25 anyone else have the right to merchandise 'King Kong'?"
26

And he said no, that we had superior rights to

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1 anyone else.

2 Q. All right. Did you, in the course of that
3 discussion, discuss with Mr. DiMuro the RKO-Universal
4 litigation?

5 A. Not really. Just in the most general sense.

6 Q. Did you ask Mr. DiMuro whether the property was
7 in the public domain?

8 A. I don't recall specifically. I probably touched
9 on that, because I was aware of it. But I don't recall.

10 MR. FAIRHURST: What property are you referring to in
11 your question, John?

12 MR. KIRBY: "King Kong."

13 MR. FAIRHURST: The gorilla, the name, the story, the
14 underlying work, the picture? Because "King Kong" is not
15 going to do. It's not going to produce a sharp record.

16 If you want to specify what we're referring to,
17 I won't have any difficulty with it. Otherwise, the witness'
18 testimony could include all of those or or only one portion
19 of it.

20 MR. KIRBY: You can certainly clear that up. At this
21 point --

22 MR. FAIRHURST: You have no interest in clearing it
23 up, I assume.

24 MR. KIRBY: At this point I'm asking her generally.

25 MR. FAIRHURST: Well, you can't give a general answer
26 to that question, John. I don't mean to be argumentative,

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1 but if you are saying "King Kong" and you are letting the
2 witness infer what you may have in your mind, you are not
3 communicating with the witness; you are misleading the
4 witness.

5 MR. KIRBY: I certainly don't intend to mislead
6 Ms. Sifuentes.

7 MR. FAIRHURST: Then I suggest you specify what you
8 have in mind when you say "King Kong," so the witness can
9 answer the question.

10 MR. KIRBY: Ms. Sifuentes has answered the question.
11 I will ask her some further questions.

12 Q. Ms. Sifuentes, what, to the best of your
13 recollection today, was the substance of your conversation
14 with Mr. DiMuro about the property "King Kong" being in the
15 public domain?

16 A. Well --

17 MR. FAIRHURST: Objection; form.

18 THE WITNESS: -- I only recall generally. I mean,
19 I -- I only recall that we briefly touched it. It was a
20 really short conversation. And that I was satisfied with his
21 decision that there wasn't any big problem.

22 Q. BY MR. KIRBY: All right. Did you ask
23 Mr. DiMuro whether Universal had changed it's position as to
24 whether "King Kong" was in the public domain?

25 A. Well, I'm sure that was part of the
26 conversation.

1 Q. And what did he say to you?

2 A. I don't recall specifically.

3 Q. And you don't recall whether or not he told you
4 if Universal had changed it's position as to whether or not
5 "King Kong" was in the public domain?

6 MR. FAIRHURST: She didn't even recall whether she
7 asked him that question, John. Form, again.

8 Q. BY MR. KIRBY: Go ahead and answer, please.

9 A. Can she repeat the question, please.

10 Q. Certainly.

11 (Record read.)

12 THE WITNESS: All that I recall is that it was not a
13 problem at this time, you know, to interfere with our going
14 ahead with merchandising.

15 Q. BY MR. KIRBY: That's what Mr. DiMuro told you?

16 A. Yes.

17 Q. After Mr. DiMuro told you that you did not have
18 the right to the RKO movie and the Dino DeLaurentiis movie,
19 did you ask him what exactly it was that you were entitled to
20 license? And by "you" I mean Merchandising Corporation of
21 America.

22 A. Now, if you're asking me specifically, I don't
23 have a specific recollection of a -- you know, of everything
24 we said to each other. But generally, that was part of the
25 conversation.

26 Q. Let me ask you this then, Ms. Sifuentes: As a

A001723

1 result of your conversation with Mr. DiMuro, what was your
2 understanding of what Merchandising Corporation of America
3 could license of the property "King Kong"?

4 A. Well, my understanding immediately after that
5 conversation was that we were going to license "King Kong,"
6 the story, and at that time I thought also the movie.
7 Because I thought that whoever had the pictures from the
8 original movie with Fay Wray and Bruce Cabot was going to let
9 us use them, but it turned out they weren't.

10 Q. So I am a little unclear now.

11 After your conversation with Mr. DiMuro, it was
12 your understanding that with the cooperation of the owner of
13 the movie, you could merchandise, you could license the "King
14 Kong" property, including the original movie; is that
15 correct?

16 A. Yes.

17 Q. But it was, I take it from your answer, that it
18 was your understanding that without the cooperation of the
19 owner of the movie, your rights to license were substantially
20 more restricted; is that correct?

21 A. In the sense that we didn't have any art work to
22 give anyone.

23 Q. So what then was your understanding of what
24 Merchandising Corporation of America could license with
25 respect to the property "King Kong" by itself?
26

A. The name and anything depicting the story. But

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1 art work would have to be generated, either by us or by
2 licensees.

3 Q. Now after your conversation with Mr. DiMuro, did
4 you on behalf of Merchandising Corporation of America, make
5 any contact with RKO to secure their cooperation with respect
6 to the merchandising of "King Kong"?

7 A. I don't remember specifically who I called, but
8 I did contact whichever studio had the photographs or had
9 control of them.

10 Q. That is, you personally called someone?

11 A. Yes.

12 Q. Do you remember who it was that you called?

13 A. No, I don't.

14 Q. And was this shortly after your conversation
15 with Mr. DiMuro?

16 A. Yes.

17 Q. Did you and Mr. DiMuro agree that you would make
18 a call to the studio that owned the pictures, as you put it?

19 MR. FAIRHURST: Are you asking her whether she
20 discussed that with DiMuro in the first conversation with
21 him?

22 MR. KIRBY: Yes.

23 THE WITNESS: I don't remember specifically. I mean,
24 I wouldn't have asked his permission, because that was part
25 of my job, you know, to get the material necessary from
26 wherever it was.

A001725

Q. BY MR. KIRBY: Did Mr. DiMuro give you the name of someone to call?

A. I don't recall that.

Q. Did you have more than one conversation with the studio at about this time, which is the summer of 1980?

A. Yes, I did. I had several conversations with a number of people, including museum in New York.

Q. What museum?

A. The -- I don't remember which one it is. It's the major museum that has all of the photographs.

Q. Is this a motion picture museum?

A. No, it's the New York Museum of Art.

Q. New York Museum of Art.

A. I didn't know there was another one.

Q. And let me make sure I understand this: You called one or more people at the studio?

A. Yes, and I don't know how many I spoke to. I don't remember whether I spoke to more than one.

Q. All right. And you also called the museum in New York?

A. Yes.

Q. Did you call anyone else?

A. I don't remember how many people I spoke to.

Q. I mean other than one or more people at the studio and the museum, did you call anyone else?

A. I don't know. I did ask Mr. DiMuro to help me,

A001726

1 because I wasn't getting any cooperation.

2 Q. I take it from your answer you didn't get
3 cooperation from the studio?

4 A. That's right.

5 Q. What did you ask the studio?

6 A. Well, first I asked them for pictures. And
7 they -- well, I didn't get anything worth using. And after I
8 went round and round with -- I realize now more than one
9 person there, and also speaking to Joe DiMuro, I then went to
10 the museum hoping that I could get some pictures there.

11 Q. All right. When you say you didn't get anything
12 worth using, they did send you pictures?

13 A. Yes.

14 Q. The studio?

15 A. It was either the studio or someone -- may have
16 been an outside photography studio or their photographer
17 in-house -- I don't remember -- but some photography unit
18 sent me some pictures.

19 Q. All right. And were these pictures of the --
20 from the original "King Kong" movie?

21 A. Yes.

22 Q. Did the studio say that you were authorized to
23 use those pictures in connection with your merchandising
24 efforts?

25 A. That's my general recollection, yes.

26 Q. So when you say "not worth using," you meant you

A001727

1 were dissatisfied with the particular pictures you were sent?

2 A. I mean they didn't show "King Kong."

3 Q. Oh. I suppose that is a major problem.

4 Did you ask them to send you some pictures that
5 did show "King Kong"?

6 A. Of course I did.

7 Q. And what did they say?

8 A. Well, they were uncooperative. They said -- I
9 don't remember everything they said. But, of course, they
10 directed my -- after talking to a lot of people, that
11 possibly the museum might have some pictures that they would
12 release to me.

13 Q. Did they say they simply didn't have pictures
14 available, or did they say that they were not going to make
15 them available to you?

16 A. My general recollection was that they were vague
17 and really didn't answer my questions.

18 Q. Did you attempt to negotiate a contract with the
19 studio to obtain the right to use the pictures?

20 A. No, I did not.

21 Q. Did they suggest to you that you pay them a fee
22 for using the pictures?

23 A. The only -- not in the sense of -- that you are
24 suggesting, of a contract. But those pictures that I did get
25 that didn't show "King Kong," I did have to pay for.

26 Q. You paid for the pictures that were sent?

A000788

1 A. Yes.

2 Q. Did you pay for the right to use those pictures?

3 MR. FAIRHURST: I think she has testified, not in the
4 sense that you use that term.

5 THE WITNESS: I don't really recall specifically what
6 my conversations were. Someone -- I know that my general
7 feeling was, after conversations with these people was, if I
8 could actually be successful in getting anything that was
9 useful, then I could use them.

10 Q. That was your impression?

11 A. That was my impression. But I'm not really sure
12 at this point at all.

13 I mean, it was nothing that I would have said,
14 without getting additional rights, tell somebody, "Go ahead
15 and use the picture," any specific picture from the movie. I
16 would have had to do more.

17 Q. I see. Did you obtain any pictures from the
18 museum?

19 A. I don't recall specifically. I don't really
20 recall.

21 Q. Okay.

22 MR. FAIRHURST: John, I don't mean to be unduly
23 difficult, but aren't we wandering a little off here? I
24 mean, after all, your letter of November 27 tells me that you
25 want to redepose Ms. Sifuentes in certain specific areas, and
26 I agree she has raised something new, but this is like a

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1 repeat of the deposition.

2 Is that what your intention is?

3 MR. KIRBY: It's not a repeat of the deposition, Doug.
4 And I certainly don't intend to do that, because I don't want
5 to take Ms. Sifuentes' time or yours or mine. But obviously,
6 this whole line of inquiry was stopped because we didn't have
7 this memorandum at the last deposition.

8 MR. FAIRHURST: I anticipated you would say that. I
9 don't share that the memorandum stopped that line of inquiry.
10 I think we're leagues beyond it.

11 MR. KIRBY: Let's march along. I think we'll
12 accomplish this rapidly.

13 Q. Do I take it that these conversations as to
14 which you are testifying now with respect to your efforts to
15 obtain cooperation from the studio took place during the
16 summer of 1980, or did they extend into the fall and beyond?

17 A. They would have taken place over a longer period
18 of time.

19 Q. Perhaps through the rest of 1980?

20 A. Perhaps.

21 Q. Did they extend into 1981?

22 A. I really don't remember.

23 Q. Did there ever come a time when you did obtain
24 pictures from the studio and the right to use those pictures
25 in connection with your licensing efforts for "King Kong"?
26

A. I don't recall.

A001730

1 Q. Do you recall whether you ever entered into a
2 contract with the studio?

3 A. I did not.

4 Q. Did you during 1980, to the best of your
5 recollection, enter into any licenses with respect to "King
6 Kong"?

7 A. I don't recall any.

8 Q. Do you recall having discussions with any
9 potential licensees about "King Kong"?

10 A. At what time?

11 Q. During 1980.

12 A. Well, I don't know exactly when this occurred,
13 but I think I testified in my last deposition that we did put
14 "King Kong" in -- into our newsletter; and that I did, when
15 mentioning it, when people asked what we had to license, we
16 had it under the category of our various Universal monsters,
17 and I would mention it as well. But only in that sense.

18 I didn't have any long, extended conversations
19 with anyone.

20 Q. All right. Prior to the time MCA entered into a
21 license with Tiger Electronics with respect to "King Kong,"
22 did MCA enter into any license contracts with respect to
23 "King Kong"?

24 A. I don't know if it was prior. The only other
25 license we entered into was the one with Ben Cooper Company.

26 Q. Was that a continuation of a prior license, to

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1 the best of your recollection?

2 A. Well, not specifically a continuation. But they
3 had the "King Kong" license originally from Dino DeLaurentiis
4 with regard to his movie.

5 Q. In connection with issuing a license to Ben
6 Cooper, did you have any discussions with DDL?

7 A. No, I didn't.

8 Q. Did you have any discussions with Paramount?

9 A. No.

10 Q. And you said, I believe, that the Ben Cooper
11 license was a license for a Halloween mask?

12 A. Halloween costume for children.

13 MR. FAIRHURST: Trick or treat bags as well.

14 MR. KIRBY: And trick or treat bags.

15 MR. FAIRHURST: Let's not forget the trick or treat
16 bags.

17 Q. BY MR. KIRBY: Was that for depictions of "King
18 Kong"?

19 A. Generally, yes.

20 Q. Did you license the right, to the best of your
21 recollection, to make a "King Kong" costume -- I will
22 confine it to the costume, not the trick or treat bag for the
23 moment -- that looked like the "King Kong" in the DDL movie?

24 A. No.

25 Q. What was the "King Kong" to look like in the
26 license you granted to Ben Cooper?

A001732

1 A. We told Mr. Cooper that he would have to change
2 his art work; that we couldn't give him any rights to the DDL
3 movie, and that it had to be a different "King Kong" and it
4 had to relate to the original movie.

5 Q. Had to relate to the original movie?

6 A. The original. He had to create his own art
7 work.

8 Q. Did you have any discussions with the studio
9 that made the original movie, which I think it's clear on the
10 record, is RKO?

11 A. No.

12 Q. Did you have any discussion with RKO about what
13 the Ben Cooper "King Kong" costume would look like?

14 A. No.

15 Q. Now, I would like to have the reporter mark as
16 Defendant's Exhibit 133 something entitled The Licensor, an
17 MCA Company, dated April 1979.

18 (Defendant's Exhibit 133 was marked
19 for identification by the reporter
20 and is attached hereto.)

21 Q. BY MR. KIRBY: Ms. Sifuentes, let me show you,
22 while we're waiting for the tea, what has been marked as
23 Defendant's Exhibit 133, and ask you if that is an example of
24 the newsletter to which you referred that you sent out
25 listing various MCA properties available for licensing?

26 A. Yes, it is an example.

A001733

1 Q. What did he say to you?

2 A. I don't remember specifically, but he -- I just
3 remember generally that he did try to help me.

4 Q. Was he successful in obtaining cooperation?

5 A. I don't recall. I mean, I don't recall whether
6 I got the information about the New York Museum of Art from
7 him or not. That may have been the way I got there.

8 Q. Did you ever discuss with Mr. DiMuro entering
9 into a contract with the studio to obtain rights from them to
10 assist you in licensing "King Kong"?

11 A. We did discuss it generally.

12 Q. And what did he say?

13 A. I don't remember specifically what he said. But
14 generally, we decided we would wait and see what the
15 licensees would come up with in terms of art work.

16 Q. Did you discuss with Mr. DiMuro the impact the
17 restrictions on your ability to use pictures from the movies
18 had on your ability to merchandise "King Kong"?

19 MR. FAIRHURST: She didn't testify to an impact.

20 She --

21 MR. KIRBY: Let me --

22 Q. Did it have any impact?

23 A. Well, not really. Because nobody was interested
24 in it.

25 Q. When you say "nobody was interested," you mean
26 no potential licensees were interested?

A001734

1 A. That's right.

2 Q. And I take it from your prior testimony this
3 period of non-interest extended up to the time when you
4 licensed Tiger, with the exception, also, of the Ben Cooper
5 license.

6 MR. FAIRHURST: What is a period of non-interest? I
7 don't really know what we're talking about.

8 Q. BY MR. KIRBY: I am talking about the period
9 from June 1980 until September of 1981.

10 MR. FAIRHURST: I'm not talking about the time; I
11 understand the concept of time.

12 What I do not understand is the concept of
13 non-interest. You can either have interest, by which someone
14 would call you or contact you or vice versa; or there could
15 be none of that, if what you are referring to is the absence
16 of that. But non-interest the way you put it, John, suggests
17 a positive concept. I don't know how it could work that way.

18 That's all I am saying. It's a negative.

19 MR. KIRBY: I understand that.

20 Q. I believe, Ms. Sifuentes, you testified that
21 nobody was interested in the property; is that correct?

22 A. That's right. At some point -- and I don't
23 remember when it was -- whether it was early or late, we did
24 discuss possible use of a "King Kong" concept with, I believe
25 it was an ad agency. But that never went through.

26 Q. Do you remember what ad agency that was?

A001735-

1 A. No, I don't.

2 Q. During this period of June '80 to September '81,
3 did you discuss merchandising "King Kong" with anyone else at
4 MCA? And I'm using that term broadly to include the parent
5 company, merchandising company, and Universal, other than
6 Mr. DiMuro?

7 A. I spoke to Mr. Adler.

8 Q. Other than Mr. DiMuro and Mr. Adler?

9 A. I'm sure I spoke briefly to John Nuanes.

10 Q. And he, I recall, is a lawyer in the Universal
11 law department; is that correct?

12 A. Yes.

13 Q. Anyone else?

14 A. Not that I recall.

15 Q. Did you ever have any conversations with
16 Mr. Sheinberg about "King Kong"?

17 A. No.

18 Q. Let me be fair on this. I'm talking about
19 during the period to September '81, from June '80 to
20 September '81.

21 A. No.

22 Q. Ms. Sifuentes, at your earlier deposition, you
23 testified and referred to an exhibit that was marked as 114,
24 that you initiated a trademark search with respect to "King
25 Kong" in September of 1981. Do you recall that?

26 A. I don't recall the dates, but I do recall

A789^a

1 initiating a trademark search.

2 Q. I don't want to prolong this.

3 I will show a copy of the exhibit to you. I
4 think the record is clear on this, but let me show you the
5 search which is the subject of Defendant's Exhibit 114 for
6 identification.

7 Had you initiated any prior search with respect
8 to "King Kong"?

9 A. No, not that I recall.

10 Q. At the time you began having discussions with
11 Tiger about a license for an electronic game to be called
12 "King Kong," did you know whether Universal had a registered
13 trademark in "King Kong"?

14 A. Well, my understanding prior to the time I
15 spoke --

16 Q. Yes.

17 A. My understanding was they did not.

18 Q. Was that the state of your understanding all
19 during 1980 and 1981?

20 A. Yes.

21 Q. Did you, during that period, suggest that MCA --
22 and again, in order to save time, I will use MCA as referring
23 to the parent and subsidiaries. If it makes a difference,
24 tell me. But otherwise, I will be referring to MCA, when I
25 use that, as the whole company.

26 A. Okay.

A001737

1 MR. FAIRHURST: I have to object to the form of that,
2 because you put -- I think that puts a burden on the witness.
3 It's a little unfair.

4 I don't mean to -- I understand what you are
5 trying to do, but for the sake of clarity, when you are going
6 to ask the question "Did you suggest to MCA" -- if you want
7 the witness then to answer your question and then to single
8 out to whom she spoke, I think that's a little unfair.

9 I think, as the questioner, you have an
10 obligation to make the questions a little fairer than -- a
11 little clearer than that. I am going to object to form,
12 because it puts a terrible burden on the witness.

13 Q. BY MR. KIRBY: Ms. Sifuentes, if it creates any
14 problem at all, you tell me.

15 Did you make any suggestion at all to anyone at
16 your employer that "King Kong" be registered as a trademark?

17 A. You mean at any time?

18 Q. Up to September of 1981.

19 A. I don't recall specifically. But generally, I
20 would have been already discussing this with John Nuanes.

21 Q. So is that a statement about your general
22 practice, rather than any specific recollection of having
23 suggested that to him?

24 A. It's more -- leans towards my general practice.
25 I mean, I know I spoke several times to Mr. Nuanes.

26 Q. And to the best of your recollection, in those

1 conversations with Mr. Nuanes, did you suggest that MCA
2 obtain a registration for the trademark "King Kong"?

3 A. If you're asking me specifically, I don't
4 recall.

5 Q. At or about the time that MCA entered into a
6 license agreement with Tiger, did you suggest to Mr. Nuanes
7 or anyone else at Universal or MCA that a trademark could be
8 obtained for "King Kong"?

9 A. A trademark should be obtained for "King Kong."
10 Yes, I discussed that with John.

11 Q. And can you tell me approximately when that was?
12 Was that at about the time you licensed Tiger?

13 A. Yes.

14 Q. Whose responsibility was it to obtain a
15 trademark for "King Kong"?

16 A. Basically it was John Nuanes' responsibility.
17 We worked together.

18 Q. Did either you or Mr. Nuanes, during 1981,
19 attempt to register "King Kong" as a trademark?

20 A. I don't remember specifically when, but we did
21 at some point.

22 Q. Do you recall in your prior deposition
23 testifying about purchasing an electronic game and putting
24 the name "King Kong" on it, and arranging for sale to the
25 Universal City Tour?

26 A. Yes.

A001739.

1 Q. Was that the time when you first made an effort
2 to obtain a registration for "King Kong" as a trademark?

3 A. You mean when -- you don't mean when I first
4 discussed it, but when I first --

5 Q. When you first did something about it?

6 A. Yes.

7 MR. FAIRHURST: John, could I take a very brief break.

8 (Brief recess.)

9 MR. KIRBY: Back on the record. What was the last
10 question and answer?

11 (Record read.)

12 Q. BY MR. KIRBY: Ms. Sifuentes, looking at
13 Defendant's 114 in front of you, in your last deposition, you
14 testified that you showed a copy of this report, Defendant's
15 114, to Mr. Adler and discussed it with him?

16 A. Yes.

17 Q. And I asked you what you said to Mr. Adler about
18 the trademark report. Would you now tell me what you did say
19 to him about this trademark report.

20 A. You don't have any objection, Mr. Fairhurst?

21 MR. FAIRHURST: No, I do not.

22 THE WITNESS: Okay. Well, I don't remember
23 specifically what --

24 MR. FAIRHURST: For the record, I should say Universal
25 does not have an objection, and advises you to answer the
26 question.

A001740

1 THE WITNESS: I don't remember specifically what I
2 discussed with him.

3 Q. BY MR. KIRBY: Did you point out to him that
4 other people had registered "King Kong" as a trademark?

5 A. Yes, I pointed out everything that was in the
6 report.

7 Q. Did you discuss with him whether or not any
8 action should be instituted?

9 A. Did I discuss that with him?

10 Q. Yes.

11 A. Yes, I did.

12 Q. And what did he say to you?

13 A. I don't remember what he said.

14 Q. Did you institute any actions as a result of
15 having obtained this trademark search?

16 A. No.

17 Q. Did you discuss with Mr. Adler whether or not
18 this put any crimp into MCA's plans to license "King Kong"?

19 A. I'm sure I did, but I don't remember any
20 specific discussion. And I haven't reread this carefully I
21 don't know if you want me to.

22 Q. Please take a look at it.

23 A. Okay.

24 Q. Certainly. And thank you very much for stoppin'
25 me. Any time something like that occurs and you want to look
26 at it more closely, please tell me.

A001741

1 A. All right.

(Discussion off the record.)

2 THE WITNESS: I've read it.

3 Q. BY MR. KIRBY: Thank you.

4 Now that you have had a chance to read through
5 the document, Ms. Sifuentes, is your recollection refreshed
6 as to any conversation you had with Mr. Adler about this
7 report?
8

9 A. No, it's not refreshed.

10 Q. Did you discuss this report with anyone other
11 than Mr. Adler in the employ of Universal or MCA?

12 A. I discussed it with Mr. Nuanes.

13 Q. And what did you say to Mr. Nuanes?

14 A. I don't recall the conversation.

15 Q. Did you discuss with him the possibility of
16 initiating proceedings against anyone who appeared in this
17 report?

18 MR. FAIRHURST: Well, wait a minute. I have to object
19 to that. That's a little unfair, John. I mean, half these
20 things were abandoned; some of them are not trademarks; some
21 of them are, after all, Universal.

22 MR. KIRBY: Ms. Sifuentes is perfectly capable of
23 telling me yes, she did or no, she didn't.

24 MR. FAIRHURST: She said she doesn't recall the
25 discussions.

26 MR. KIRBY: She hasn't testified to that.

A001742

1 MR. FAIRHURST: I don't mean to mischaracterize the
2 testimony.

3 Q. BY MR. KIRBY: All right. Did you discuss with
4 Mr. Nuanes bringing an action against anyone listed in this
5 report?

6 A. I don't recall specific -- the specific
7 conversation. But we did discuss in general whether that
8 would be necessary. I mean, I remember that generally. And
9 at the time we didn't think it was necessary.

10 Q. That was the conclusion that you and Mr. Nuanes
11 reached?

12 A. Yes. And I want to make it clear that at that
13 point we didn't feel anything was necessary. That didn't
14 mean we wouldn't change our minds later.

15 Q. I understand. And can you tell me what the
16 basis of that decision was that you and Mr. Nuanes reached?

17 A. Well, I -- it's very difficult for me to answer,
18 since I don't remember the specifics of the conversation.

19 Q. Well, I'm asking you to tell me as best you can
20 what transpired that led you and Mr. Nuanes to conclude not
21 to initiate any action at that time as a result of the
22 information received in this trademark search?

23 A. Well, we would have been discussing it in
24 relation to Tiger Electronics and toys, and there didn't seem
25 to be any problem in those particular areas.

26 Q. Did you discuss with him the general lack of

A000790

1 interest in "King Kong"; that it wasn't worth instituting any
2 litigation?

3 A. I don't remember specifically.

4 Q. Do you recall generally?

5 A. I don't remember.

6 Q. Did Mr. Nuanes ask you whether anyone was
7 interested other than Tiger Electronics in "King Kong"?

8 A. I don't remember any question he may have asked
9 me. But that was part of the conversation.

10 Q. I'm sorry. What was part of the conversation?

11 A. Well, I mean, we discussed licensing "King Kong"
12 and what interest there was. And that was the basis for, as
13 I think I described briefly in my last answer, whether or not
14 we should contact anybody in this search report.

15 Q. I understand. I understand your testimony now
16 to be that basically since no one was interested in "King
17 Kong," that you didn't think it was worthwhile to proceed
18 against anyone.

19 MR. FAIRHURST: That's not her testimony.

20 MR. KIRBY: Let me finish the question. Then you can
21 object to it if you want.

22 Q. Did you understand what I just said?

23 A. I would appreciate it if you would rephrase it.

24 MR. KIRBY: Okay. Would you read back what I just
25 said.

26 (Record read.)

A000791

1 Q. BY MR. KIRBY: Is that correct?

2 A. Well, I don't recall whether we felt we would
3 proceed against anyone. We -- I mean, that's much stronger
4 than my recollection.

5 My recollection was simply that since those
6 areas were basically open, that it wasn't worth looking into
7 the remainder of it because there was very little activity in
8 licensing.

9 Q. "King Kong"?

10 A. Right.

11 Q. Did you reduce to writing your discussions with
12 Mr. Nuanes or Mr. Adler, as to which you have just testified,
13 with respect to any decisions made after receiving this
14 trademark search?

15 A. I don't believe I did.

16 Q. Did you discuss with Mr. Nuanes or Mr. Adler
17 whether, as a result of this trademark search, that
18 Universal's rights with respect to "King Kong" were in doubt?

19 A. As a result of this search?

20 Q. As a result of this search.

21 A. The -- I don't recall discussing that
22 specifically. I mean, it was not my duty to handle all of
23 MCA's trademarks. I was only interested in merchandising and
24 things relating to that.

25 Q. Yes.

26 A. So all that I recall was -- it's hard for me to

A000792

1 A. Mm-hmm.

2 Q. What law firm is Mr. Laff with?

3 A. I only remember the first two.

4 Q. All right.

5 A. Laff, L-a-f-f, Whitsel, W-h-i-t-s-e-l.

6 Q. And who is Mr. Stevenson with?

7 A. Stevenson and Shulman. Did -- I don't remember
8 how to spell Shulman.

9 MR. FAIRHURST: Is that an English firm, Stevenson and
10 Shulman?

11 THE WITNESS: Yes.

12 Q. BY MR. KIRBY: Did you ever at any time have any
13 occasion to discuss "King Kong" with a Mr. Kroft?

14 A. I never discussed it with Mr. Kroft.

15 Q. Or any member or employee of Mr. Kroft's law
16 firm?

17 A. I don't believe that I did.

18 Q. Do you have any recollection today of having
19 discussed "King Kong" with either Mr. Laff or Mr. Stevenson?

20 A. I don't recall.

21 Q. Did you ever obtain an opinion from outside
22 counsel -- and I'm now asking about you, Ms. Sifuentes -- did
23 you ever for MCA obtain an opinion from outside counsel with
24 respect to Universal's rights in "King Kong"?

25 A. No.

26 Q. Did you ever ask for an opinion on that subject?

A000793

1 A. From outside counsel?

2 Q. Yes.

3 A. No.

4 Q. Now, Ms. Sifuentes, in your prior deposition,
5 you were asked questions about a second trademark search
6 which you commissioned around January 18, 1982. And that is
7 referred to in Defendant's Exhibit 117 for identification.

8 Now, prior to the time of commissioning this
9 search, did you discuss commissioning a new search with
10 anyone at Universal or MCA?

11 A. I don't recall specifically.

12 Q. Did you, to the best of your recollection, did
13 you make the decision to commission this search on your own?

14 A. I don't understand your question. You mean -- I
15 never asked anyone whether I could commission a search. If I
16 wanted one, I did.

17 Q. Yes.

18 A. I frequently would ask, depending on how much
19 time I had, Mr. Nuanes to help, if he would get a search.

20 Q. Now, I am asking not the question of whether or
21 not you could; but did you discuss with anyone whether or not
22 it would be a good idea or whether or not you should initiate
23 another search?

24 A. I don't remember specifically that conversation.
25 But I was in constant contact with Mr. Nuanes on this.

26 Q. Do you today recall whose idea it was to have a

A001746

1 second search?

2 A. It was my idea.

3 Q. It was your idea. Do you recall today why you
4 decided to have a second search?

5 A. Well, apparently -- well, I recall generally
6 that the original trademark search was not broad enough.

7 Q. What do you mean by that? You have a copy of
8 the original search in front of you, Defendant's 114 for
9 identification.

10 A. It didn't cover -- well, specifically, computer
11 games.

12 Q. So it was your determination to have a search
13 directed specifically to computer games?

14 A. Yes.

15 Q. A different category?

16 A. Since -- excuse me.

17 MR. FAIRHURST: Just a clarification, form problem,
18 John. Different from what? Different from the prior
19 category?

20 MR. KIRBY: Yes.

21 MR. FAIRHURST: Because the prior category says "toys
22 and clothing."

23 MR. KIRBY: Yes.

24 MR. FAIRHURST: And the second one says "computer
25 games." If that's what you are asking, I have no problem
26 with it. But I didn't know what "different from" was meant

A001747

1 to refer to.

2 THE WITNESS: Well, I commissioned the first trademark
3 service; I would have thought that games of any sort would be
4 included under toys, because so many of all sorts of games
5 are. And I realized much later that it wasn't included.

6 Q. BY MR. KIRBY: To the best of your recollection,
7 what led you to the realization that it wasn't included?

8 A. I don't really recall specifically. I just -- I
9 did have conversations with various people regarding what was
10 included in the classes.

11 And, of course, during that period, arcade games
12 really became hugely successful and very popular. And I
13 became aware that that might not be included; that there was
14 a question whether it was included or not.

15 Q. When you say "during that period," you're
16 referring to the period between the first search in September
17 of '81 and the second search in January of '82; is that
18 correct?

19 A. Yes.

20 Q. Now, when you received this second search,
21 Defendant's Exhibit 117, I take it you read it?

22 A. Yes, I did.

23 Q. And you previously testified that you showed
24 this second search to Mr. Adler and discussed it with him; is
25 that correct?

26 A. Yes, I did.

A001748

1 Q. What did you say to Mr. Adler?

2 A. I don't remember specifically, but I did discuss
3 everything in it.

4 Q. When you say you discussed everything in it,
5 does that mean you discussed each of the registrations in it?

6 A. No. I would have summarized it and discussed
7 anything that I thought was a problem.

8 Q. Did you discuss anything in this report with him
9 as a problem?

10 A. I'll have to read it.

11 Q. Would you please.

12 A. I would have discussed "Donkey Kong."

13 I must say that I do not recall specifically
14 what I discussed with him at that time. Because I do not
15 remember whether I knew specifically at that time what
16 "Donkey Kong" was.

17 Q. When you say "at that time," you're referring to
18 the period of time when you received this report.

19 A. Yes.

20 Q. Okay. Now, you testified previously,
21 Ms. Sifuentes, that by the time of the Toy Fair in New York
22 in February, approximately one month after this, you knew
23 what "Donkey Kong" was?

24 A. That's right.

25 Q. And you and Mr. Adler had gone and looked at a
26 "Donkey Kong" game?

A001749

1 A. Arcade game, yes.

2 Q. Arcade game. Now, did you at any time discuss
3 with Mr. Adler the fact that Nintendo of America had an
4 application pending for a trademark for nine electronic games
5 using the video display for "Donkey Kong"?

6 A. Did you say nine electronic games?

7 MR. FAIRHURST: Nine. I think it did sound like none,
8 too, but I think it was nine.

9 Q. BY MR. KIRBY: Nine.

10 A. I'm sorry. Could you repeat the question.

11 MR. KIRBY: Would you please.

12 (Record read.)

13 THE WITNESS: Yes, I did.

14 Q. BY MR. KIRBY: What is your best recollection of
15 what you said to Mr. Adler?

16 A. Well, there were two parts, generally speaking,
17 to our conversation. We discussed how "Donkey Kong" related
18 to the movie, and we discussed what was probably on the minds
19 of the Tiger Electronics people in licensing "King Kong."

20 Q. Okay. Why don't we take them one at a time,
21 then.

22 What did you discuss with him about how the game
23 "Donkey Kong" related to the movie?

24 A. Well, generally speaking, because I don't have a
25 specific recollection, we discussed the gorilla, we discussed
26 the art work on the arcade itself, we discussed the game play

A001750

COLEMAN, HAAS, MARTIN & SCHWAB,

1 and -- as we could understand it after seeing it, and how it
2 related to the story and the movie.

3 Q. Okay. Now, I take it this discussion took place
4 sometime between the time you received the trademark search
5 and the Toy Fair?

6 A. Yes. Well, I can't say exactly when it was,
7 because I don't remember whether that was before or after I
8 got this trademark search.

9 Q. I understand. Because you previously testified
10 you may have discussed this with him before getting this
11 trademark search?

12 A. Yes, mm-hmm.

13 Q. Let me ask it this way: To the best of your
14 recollection, this discussion took place prior to the Toy
15 Fair?

16 A. Yes, it did.

17 Q. Did you discuss with respect to, as you said,
18 the first aspect of this discussion, did you discuss with
19 Mr. Adler whether or not MCA or Universal should notify
20 Nintendo that it should stop using "Donkey Kong" or file a
21 lawsuit against Nintendo?

22 A. Well, I can't say that we used that terminology
23 or spoke exactly in those terms. But we did discuss whether
24 we had any rights and whether we should in fact contact our
25 attorneys to, you know, file any lawsuits.

26 Q. Did you and Mr. Adler contact your attorneys

A001751

with respect to filing a lawsuit?

A. We did not ask anyone to file a lawsuit.

Q. Did you and Mr. Adler conclude that a lawsuit should be filed?

A. We were very nebulous about it, and we felt we needed to get a little bit more information.

Q. What did you do to get more information?

A. I really don't remember. I know that we looked at more "Donkey Kong" games and -- I mean, the ripoff games for this were two -- at least two. And I don't really remember what else we did or who we talked to.

Q. All right. Now with regard to the second aspect, what did you and Mr. Adler discuss about what Tiger had in mind?

A. Well, since no one was really interested in "King Kong" and since I had already put the question to them when they were initially looking at "King Kong," I asked them why they were interested in "King Kong," rather than any of the other obviously much more viable properties we had.

And they said they just simply loved "King Kong." Didn't make much sense, but -- and then in addition to that, since they had not sent any material for us to approve and I had -- once I made the agreement with them, it was very difficult to get ahold of them and they simply ignored all of my requests for material, I took that to mean that there was a high probability that since "Donkey Kong" was so very

A001752

1 popular, that they were going to copy it.

2 Q. And that's what you discussed with Mr. Adler?

3 A. Yes.

4 Q. Did you and Mr. Adler determine to do anything
5 about Tiger at that point?

6 A. At that point, we went back and looked at the
7 contract, and it looked as though what was -- as I recall
8 generally at the moment without the contract in front of me,
9 I think it was clear that we had licensed the movie. And of
10 course we had approval of all art work, game play,
11 everything.

12 And we had seen nothing. They had a certain
13 leeway of time to produce the material, the product. But we
14 felt that we had to give them some time, you know, to make
15 demands for them to show us the preliminary material; but
16 that we probably should see what they were actually going to
17 do, since we were surmising they were going to copy, but we
18 didn't know for sure.

19 Q. You say you looked at two ripoff games of
20 "Donkey Kong"?

21 A. Yes.

22 Q. Do you recall their names?

23 A. No, I don't. I think they both had Kong as the
24 last part of it, but I don't remember the full names.

25 Q. Where did you see them, if you recall?

26 A. In various -- one was in a joke shop store; they

A001753

1 had a couple of arcade games. And I don't remember where the
2 other one was.

3 Q. Did you, after having your discussion with
4 Mr. Adler, discuss the same subject with Mr. Nuanes?

5 A. At some point. I don't remember exactly when.

6 Q. I'm asking first, immediately after your
7 discussion with Mr. Adler, by which I mean within a few days.

8 A. I don't recall.

9 Q. But you did discuss it at some point with
10 Mr. Nuanes?

11 A. Yes.

12 Q. What did you say to Mr. Nuanes?

13 A. I really don't recall. It would have been
14 generally what I have been testifying to right now.

15 Q. That is, you described to him the fact that
16 Nintendo had applied for registration for "Donkey Kong," and
17 that it was a hugely popular game, and that you were worried
18 that Tiger might be trying to simply copy it?

19 A. I don't remember the details. I really don't.

20 Q. That, I take it, is what you just testified --

21 A. I discussed the whole thing with him, yes.

22 Q. Including those things that I've just mentioned?

23 A. I just don't recall specifically.

24 Q. Okay.

25 Q. Did you discuss this subject at or about this
26 time with anyone else at Universal or MCA, other than

A001754

1 Mr. Adler and Mr. Nuanes?

2 A. This is before the Toy Fair?

3 Q. Before the Toy Fair.

4 A. I don't recall.

5 Q. Did you reduce your discussions on the subject
6 to any type of memorandum?

7 A. No.

8 Q. Did you notify any other officer of MCA or
9 Universal other than Mr. Adler of what you had learned about
10 "Donkey Kong"?

11 A. Almost everyone in the law department was an
12 officer.

13 Q. Okay.

14 A. And if I discussed it, which I don't recall one
15 way or the other, with Mr. DiMuro, he would have been an
16 officer.

17 Q. But you don't recall if you discussed it with
18 Mr. DiMuro?

19 A. I really don't.

20 Q. Prior to Toy Fair, did you make any decision
21 with respect to continuing efforts to license "King Kong"?

22 A. Did I make any decisions?

23 Q. Yes.

24 A. We were considering decisions, but we weren't --
25 we hadn't made any.

26 Q. What decision were you considering prior to Toy

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1 Pair with respect to licensing "King Kong"?

2 A. Whether it was worthwhile to continue to
3 license, or if people really intended simply to copy "Donkey
4 Kong"; would we, you know, be buying an awful lot of
5 lawsuits.

6 Q. That was not a decision, but that was something
7 you were considering prior?

8 A. Yes, that was a discussion.

9 Q. A discussion with Mr. Adler?

10 A. Yes.

11 Q. And Mr. Nuanes?

12 A. I don't recall if I had that specific discussion
13 with Mr. Nuanes.

14 Q. With anyone else other than Mr. Adler?

15 A. I don't recall.

16 Q. All right. And then you testified previously
17 that at the time of Toy Fair -- and I believe you have
18 corrected your deposition in this respect -- that you met
19 with a representative or representatives of Dunbar
20 Electronics or Collins.

21 And I believe you made the correction to show
22 that it was at the time of Toy Fair and it was in New York,
23 but it may not have been physically at the Toy Fair?

24 A. It was not physically at the Toy Fair; it was in
25 his offices and it was just before Toy Fair started. It was
26 part of the Toy Fair trip. We just went a little earlier, so

A001756

1 we could meet with him.

2 Q. And that, I take it from your testimony now, was
3 a prearranged meeting?

4 A. Yes, it was.

5 Q. How did that meeting come about?

6 A. He called, the gentlemen from Dunbar called.

7 Q. He called you?

8 A. I don't remember whether he called Mr. Adler
9 first or me. But I was the one to take the call.

10 Q. I see. And to the best of your recollection,
11 what did he say to you when you spoke to him?

12 A. Well, I don't remember the specifics, but he was
13 very interested in licensing "King Kong," and he told me a
14 little bit about his company and what they did. They were
15 interested in making watches with games on them.

16 Q. And after speaking to this gentleman -- do you
17 recall his name now?

18 A. No, I don't.

19 Q. You discussed that telephone call with Mr.
20 Adler, I take it?

21 A. Yes, I did.

22 Q. And did you and Mr. Adler determine to go ahead
23 and meet with him?

24 A. Yes.

25 Q. Did you and Mr. Adler discuss whether or not
26 this was just someone else trying to rip off "Donkey Kong"?

A001757

1 A. Well, I think, if I recall correctly, -- well, I
2 don't remember specifically. I remember it was a question in
3 our minds. By the time we got to the meeting with him, we
4 were just waiting to see if he was going to mention "Donkey
5 Kong."

6 Q. Well, I'm dying of curiosity. Did he?

7 A. He certainly did.

8 Q. What did he say about "Donkey Kong"?

9 A. Again, in a general way, he wanted to know if we
10 were going to sue Nintendo; that -- well, you know -- I don't
11 know if I can remember anything more specific than that.

12 It was quite obvious that he wanted to use the
13 Nintendo game, "Donkey Kong," on his watch. And if he did,
14 he expected us to protect him against Nintendo.

15 Q. During the time you were in New York in this
16 gentleman's office, did you and Mr. Adler have any private
17 discussions?

18 A. While in his office?

19 Q. Yes. Or outside his office, but during the time
20 the meeting was going on?

21 A. No. I mean, if he walked away for a minute, we
22 may have said something. I can't remember all of that.
23 But --

24 Q. Did you and Mr. Adler reach any decision with
25 respect to Dunbar/Collins during --

26 A. We had -- excuse me.

A001758

1 Q. I'm sorry. Go ahead.

2 A. We knew what we were going to do before we saw
3 him, if it occur -- you know, what we expected to happen
4 happened. It did happen. And so we were very vague, and we
5 didn't make any deal.

6 Q. Okay. What had you and Mr. Adler decided to do
7 prior to the meeting if your expectations turned out to be
8 correct?

9 A. That we would shy away from them altogether. We
10 would not have anything to do with them.

11 Q. Now, Ms. Sifuentes, at your prior deposition,
12 you testified that after returning from Toy Fair and your
13 meeting with Dunbar and Collins, that you made a decision.
14 I believe the words were, "We had made a decision we would
15 not license "King Kong."

16 A. Yes.

17 Q. Now, who participated in that decision, other
18 than you and Mr. Adler?

19 A. Mr. DiMuro.

20 Q. Anyone other than you, Mr. Adler and Mr. DiMuro?

21 A. Not that I know of.

22 Q. Did you reduce that decision to writing?

23 A. I don't believe so.

24 Q. Did you inform anyone else at Universal or MCA
25 of that decision?

26 A. No, I didn't.

A000795

1 Q. Do you know whether Mr. Adler did?

2 A. I have no idea.

3 Q. Do you know whether Mr. DiMuro did?

4 A. I have no idea.

5 Q. Did you cease including "King Kong" as a
6 property to be licensed in your newsletter?

7 A. Yes.

8 Q. After that decision was made, to the best of
9 your recollection, up until the time that you left MCA, did
10 anyone else express an interest in licensing "King Kong"?

11 MR. FAIRHURST: I'm sorry. Would you repeat that
12 question again. I just lost it.

13 MR. KIRBY: Sure.

14 (Record read.)

15 THE WITNESS: Excuse me. The only other person that
16 ever expressed an interest was that ad agency that I
17 mentioned before, and I just don't remember when they
18 expressed an interest.

19 Q. BY MR. KIRBY: Okay. Now, tell me as best you
20 can recall what the basis of the decision was that you and
21 Mr. DiMuro and Mr. Adler reached to cease licensing "King
22 Kong."

23 A. Well, the decision was reached by Mr. DiMuro and
24 myself. Mr. Adler didn't participate in it. He was
25 instructed.

26 Q. All right. And what was the basis of that

AE000796

1 decision?

2 A. That was a long conversation that I had with
3 Mr. DiMuro.

4 Q. And what was said in that long conversation?

5 A. I don't remember specifically.

6 Q. Tell me generally.

7 A. Generally, we discussed the rights of Universal
8 as they emanated from the various aspects of the lawsuit with
9 RKO and Paramount.

10 And we discussed licensing and what it entailed;
11 we discussed trademark and copyright rights as it related
12 both to licensing and to the lawsuit; and we discussed the
13 various "King Kong" movies and the grant by the, I think
14 original owner, of the right to Universal. And after a long
15 conversation, we decided that we didn't have any rights to
16 license.

17 Q. "King Kong."

18 A. "King Kong."

19 Q. Did you communicate that decision at about the
20 time that decision was made to Tiger?

21 A. Mr. DiMuro and I discussed the two licensings.

22 Q. That is Tiger and Ben Cooper?

23 A. Right. And I had already discussed with
24 Mr. Cooper what he wanted to do with the license. And he
25 said it had no value to him, and he was going to -- he wasn't
26 going to renew, and he basically sold off everything anyway.

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200
of Universal rights

1 So there was no need for me to really discuss that issue with
2 him. *the Ben Cooper Company.*

3 With regard to Tiger, whom I had not yet seen
4 *developing for King Kong* anything from in terms of what they were -- you know, their
5 game or their art work, I discussed with Mr. DiMuro *problem* that, and
6 he concurred that I should proceed in that fashion; that they
7 had really already breached their agreement by not showing me
8 any art work or really being inaccessible. And also *we discussed* our
9 conclusion that they were most likely going to copy the
10 "Donkey Kong" game. And that would certainly be a material
11 breach as well, and we would simply terminate.

12 Q. Okay. Now, this conversation, I take it, was
13 sometime in February of '82?

14 A. It was after Toy Fair. I don't remember when
15 Toy Fair ended that year. It would have been either late
16 February or very early March.

17 Q. Did you at that time contact Tiger or make an
18 effort to contact Tiger to tell them that their license was
19 terminated?

20 A. I don't remember specifically. Most of my
21 efforts to contact Tiger were unsuccessful most of the time.
22 So -- and I don't remember specifically exactly when I did
23 these things.

24 Q. But the decision had been reached.

25 A. Yes.

26 Q. Now, from the time that decision was reached

A001762

1 until the end of April 1982, did you discuss that decision
2 with Mr. Hadl?

3 A. I do not remember the sequence of events with
4 regard to Mr. Hadl's, you know, subsequent discussions with
5 Coleco. I don't remember when things happened.

6 Did I as a matter of course discuss this with
7 Mr. Hadl, no.

8 Q. With Mr. Sheinberg?

9 A. No.

10 Q. With Mr. Newman?

11 A. No.

12 Q. I take it, Ms. Sifuentes, that you know Mr. Al
13 Kahn of Coleco?

14 A. Yes.

15 Q. Had you met him prior to the time you were
16 employed by Coleco?

17 A. Oh, yes.

18 Q. Did you participate in any discussions between
19 Mr. Adler and Mr. Al Kahn in the fall of 1981, any business
20 dealings between Coleco and Universal?

21 A. Did Mr. Kahn visit us in 1981?

22 Q. Yes.

23 A. I would have been at almost every meeting.

24 Q. Did Mr. Kahn tell you and Mr. Adler that Coleco
25 was developing a home video game system?

26 MR. FAIRHURST: Wait a minute now. Time frame.

A0000799

1 Q. Okay. I take it, to the best of your 1
2 recollection, was he the lawyer affiliated with the law 2
3 department at Universal or MCA who was most familiar with 3
4 "King Kong"? 4

5 A. Yes. 5

6 Q. Now, I would like to have marked for 6
7 identification as Defendant's Exhibit 135 a memorandum from 7
8 you, Ms. Sifuentes, to Mr. Hadl dated May 12, 1982. 8

9 (Defendant's Exhibit 135 was marked 9
10 for identification by the reporter 10
11 and is attached hereto.) 11

12 THE WITNESS: I've read it. 12

13 Q. BY MR. KIRBY: Do you recall sending that 13
14 memorandum to Mr. Hadl? 14

15 A. No, I don't. 15

16 Q. It says you enclose several memos from 16
17 Mr. DiMuro regarding "King Kong" merchandising. Do you 17
18 recall what memos you enclosed? 18

19 A. No. 19

20 Q. Did you discuss this memorandum with Mr. Hadl? 20

21 MR. FAIRHURST: Let the record reflect that the second 21
22 paragraph says "Please note the initial memo of June 18, 22
23 1980, to Sid Sheinberg." 23

24 Q. BY MR. KIRBY: Do you have the question? 24

25 A. Did I discuss this memo with -- 25

26 Q. Mr. Hadl? 26

A001764

1 A. I really don't recall.

2 Q. Do you know, do you recall why you sent this
3 memorandum to Mr. Hadl?

4 A. Just very generally. Mr. Hadl was questioning
5 why we licensed "King Kong" at all.

6 Q. And he raised that question on or about May 12,
7 1982?

8 A. I don't remember. It would have been sometime
9 around --

10 Q. Sometime around the time you wrote the
11 memorandum?

12 A. Yeah.

13 Q. And what did he say, to the best of your
14 recollection, on the subject of why MCA/Universal was
15 licensing "King Kong" at all?

16 A. Well, my general recollection was, he questioned
17 whether we had any rights at all.

18 Q. When he raised that question to you, he did it
19 orally or in a memorandum?

20 A. As far as I recall, it was oral.

21 Q. Do you recall whether anyone else was there
22 other than you and Mr. Hadl?

23 A. I don't recall.

24 Q. Was it in a meeting in his office?

25 A. It could have been a meeting in his office or
26 telephone. I don't recall.

A001765

1 Q. If it was a telephone call, was it a telephone
2 call that you initiated to Mr. Hadl or that Mr. Hadl
3 initiated to you?

4 A. Mr. Hadl would have initiated it to me.

5 Q. You did not, as a matter of course, call
6 Mr. Hadl?

7 A. No.

8 Q. Now, when Mr. Hadl raised that question with you
9 and you sent him a memorandum enclosing various memos,
10 including the June 18, 1980 memorandum, did you tell Mr. Hadl
11 that subsequent to beginning the licensing effort with
12 respect to "King Kong," you and Mr. DiMuro had reached a
13 decision to stop licensing "King Kong"?

14 A. I don't recall specifics, and I don't recall
15 whether it was subsequent to this memo, but I certainly had a
16 conversation with Mr. Hadl explaining to him why I wanted to
17 terminate Tiger. And that would have included everything.

18 Q. Including what you and Mr. DiMuro discussed at
19 the time you reached the decision to stop licensing "King
20 Kong"?

21 A. Yes. I'm sure it wasn't a full discussion, but
22 it was a statement.

23 Q. Did Mr. Hadl say anything when you informed him
24 of that decision and the other matters relating to your
25 decision to terminate Tiger?

26 A. Well, I only remember generally, not

A001766

COLEMAN, JAMES M. SCHWAB,

1 specifically, that all of these matters were decisions to be
2 made by him. And I was just a -- back from it.

3 Q. I take it that he criticized the decision
4 that you and Mr. DiMuro had reached?

5 A. No, criticized the decision I had made initially
6 to license Tiger.

7 Q. I see. He didn't criticize the decision you and
8 Mr. DiMuro had made to stop licensing "King Kong"?

9 A. No.

10 Q. Did he say that he approved of that decision?

11 A. I don't recall.

12 Q. Did he question in any way, that you recall,
13 that decision?

14 A. I just don't recall.

15 Q. What did Mr. Hadl say to you with respect to
16 your original decision to license Tiger?

17 A. I don't remember specifically. I only remember
18 that he seemed to be very upset about it.

19 Q. How did he manifest being upset about it?

20 A. He wanted to know on what basis we had made a
21 license.

22 Q. And what did you say to him?

23 A. Generally, I told him, you know, about the
24 conversation with Mr. DiMuro and that we had decided to go
25 ahead.

26 Q. And did he say that there was no basis for your

A001767

1 licensing Tiger?

2 A. I don't remember specifically what he said.

3 Q. Did he generally state that there was no basis
4 for your licensing Tiger?

5 A. I can't really say that, either.

6 All I can say is that he was upset that we had
7 made the license, and seemed to suggest that we didn't have
8 any -- that we shouldn't have done it. For whatever reason;
9 I don't remember the reason.

10 Q. Did he tell you why he was upset?

11 A. I'm sure he did.

12 Q. To the best of your recollection, in general
13 terms, that's what you recall --

14 A. He questioned ^{whether} ~~that~~ we had any rights ^{in King Kong} to give.
15 And that's really all that I can remember.

16 Q. Okay. Did he tell you that he was afraid of
17 litigation because of your license to Tiger?

18 A. I don't remember specifically what he said. But
19 certainly litigation was a part of it.

20 Q. What did he say generally to you about
21 litigation?

22 A. You know, I really can't remember.

23 Q. Okay.

24 A. I don't think I should say anything.

25 Q. Did he generally, to the best of your
26 recollection, did he tell you he was afraid that Nintendo

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COLEMAN. HAAS MARTIN & SCHWAR. IN

1 would sue Universal or MCA because of the license to Tiger?
2 A. I don't remember.

3 Q. Did he say that Coleco would sue MCA or
4 Universal because of the license to Tiger?

5 A. I don't remember that either.

6 Q. Did he tell you, prior to entering into an
7 agreement with Coleco, that he was going -- that Universal
8 was going to enter into an agreement with Coleco?

9 A. Yes.

10 Q. Did he ask your advice with respect to that?

11 A. No.

12 Q. What did he tell you with respect to the
13 agreement with Coleco?

14 A. Generally, all I can remember is that told me
15 and Mr. Adler that he was going to make this agreement, and
16 he wanted me to look over the agreement that he had composed.

17 Q. Did you look over the agreement he composed?

18 A. Yes.

19 Q. Did you make any changes in the agreement he
20 composed?

21 A. A few minor changes.

22 Q. Do you recall what they were?

23 A. No, I don't.

24 Q. Did you tell him that the agreement he was
25 entering into with Coleco violated the exclusive license you
26 had granted to Tiger?

A001769

1 A. I don't remember my conversations with him
2 regarding that. He generally did not ask my advice. And it
3 was my general impression that if I was not asked, my opinion
4 was not welcome.

5 Q. Did he, to your knowledge, ask Mr. DiMuro's
6 advice?

7 A. I have no knowledge of that.

8 Q. He never placed a call to DiMuro when you were
9 there?

10 A. I don't recall.

11 Q. Do you recall DiMuro being at any of these
12 meetings you had with Mr. Hadl?

13 A. I don't believe I ever had a meeting where
14 Mr. DiMuro was present.

15 Q. Did he ever ask you what Mr. DiMuro's views
16 were, other than as you previously testified? You related
17 the discussion you and Mr. DiMuro had to Mr. Hadl.

18 A. I don't think so. I don't remember.

19 Q. Did he tell you that he was going to obtain
20 outside legal advice with respect to the Coleco agreement?

21 A. He didn't tell me anything like that, but it was
22 obvious that he was speaking to other people.

23 Q. Okay. Now I'm going to ask you again: To the
24 best of your recollection, did you ever point out to Mr. Hadl
25 that MCA had signed an exclusive license with Tiger with
26 respect to "King Kong" for electronic games?

A001770

1 A. Well, of course, we went over the agreement with
2 Tiger.

3 Q. So you did point that out to him?

4 A. Yes, in that sense.

5 Q. Did he instruct you to terminate the agreement
6 with Tiger?

7 A. No. I told him I wanted to, and he did not want
8 to.

9 Q. And he --

10 A. Did not want to.

11 Q. Did he did not want to cancel the agreement with
12 Tiger?

13 A. Yes.

14 Q. Did he tell you why he didn't want to cancel the
15 agreement with Tiger?

16 A. Not that I recall.

17 Q. And yet to the best of your recollection, you
18 went over the subject with him that Tiger had an exclusive
19 license?

20 A. Yes.

21 Q. Did he instruct you to continue the license with
22 Tiger?

23 A. Well, he -- well, we would continue if he could
24 be satisfied with not merely -- well, I'm sorry. I want to
25 answer your question.

26 Q. Thank you.

A001771

1 A. He didn't instruct me to continue anything. He
2 called a meeting with Tiger and his attorney, the gentleman
3 from Tiger and their attorney, to discuss the agreement.

4 Q. Were you present at that meeting?

5 A. Yes.

6 Q. Did he tell you what the purpose of the meeting
7 was?

8 A. Yes.

9 Q. And what was the purpose of the meeting?

10 A. Well, there was more than one purpose.

11 Q. All right. What were the purposes of the
12 meeting? Thank you.

13 A. To get appropriate material from Tiger to find
14 out what they were doing. And I don't remember specifically,
15 but it had to do with making sure there was no conflict,
16 finally, between --

17 Q. The Tiger license and the Coleco agreement?

18 A. Yes. And also, of course, no conflict between
19 whatever Tiger would come out with and the "Donkey Kong"
20 game.

21 Q. I see. Did he ever state to you, generally or
22 specifically, why he didn't want you to cancel the Tiger
23 license?

24 A. No, not that I recall.

25 Q. Did you ever ask him why?

26 A. I don't recall.

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(Defendant's Exhibit 136 was marked for identification by the reporter and is attached hereto.)

(Discussion off the record.)

Q. BY MR. KIRBY: I am now putting in front of Ms. Sifuentes Defendant's Exhibit 136 for identification.

I will ask you, Ms. Sifuentes, if you participated in drafting this response to the attorneys for Tiger?

A. No, I didn't.

Q. Did you see it prior to the time it was sent out?

A. I don't believe so, but I don't recall.

Q. Did the meeting that you and Mr. Adler and Mr. Hadl had with Mr. Rissman and his counsel take place subsequent to this letter being sent out?

A. I don't know.

Q. At the meeting, I believe -- and you correct me if I'm wrong -- you have testified previously that Tiger's counsel raised again the question of what rights Universal or MCA had to "King Kong"; is that correct?

A. Yes.

Q. And you were present at that meeting?

A. Yes.

Q. Did you make any response to him?

A. I made a few responses. I don't recall exactly

A001773

1 what they were.

2 Q. Do you recall generally what you said?

3 A. Well, generally, the attorney was trying to
4 avoid the question of the fact that they were copying "Donkey
5 Kong," and making all sorts of allegations with regard to
6 what rights we did have or didn't have. And I just tried to
7 get him back on what we felt was the track.

8 Q. You basically told him to mind his own business?

9 A. Yes --

10 Q. I'm sorry. Don't let me --

11 A. You are -- actually I do recall that, that --
12 not with regard to what rights we had, but what we were doing
13 with people like Coleco and so on, that that was basically,
14 you know, up to us. I really don't recall very well anymore.
15 Just --

16 Q. To the best of your recollection, did Mr. Hadl
17 or Mr. Adler or anyone else on behalf of Universal or MCA,
18 tell the attorney for Tiger that Universal did have the
19 rights which it was licensing?

20 A. Well, Mr. Hadl, as I recall, did do most of the
21 talking. And we did assert rights.

22 Q. Did you at any point in this discussion tell the
23 attorney for Tiger what you and Mr. DiMuro had discussed and
24 decided with respect to Universal MCA's rights in "King
25 Kong"?

26 A. No.

A001774

1 Q. Did Mr. Hadl instruct you not to relate that to
2 the gentleman from Tiger?

3 MR. FAIRHURST: Objection; form. No prior testimony
4 that Mr. Hadl was advised of that position.

5 MR. KIRBY: There has been.

6 MR. FAIRHURST: No, there has not. Ask the witness
7 the question.

8 MR. KIRBY: The record will speak for itself.

9 Q. Do you understand the question?

10 A. Mr. Hadl did not specifically instruct me to do
11 anything of that nature.

12 Q. Did he generally advise you not to enter into
13 any discussion with respect to Universal's rights in "King
14 Kong"?

15 A. No. He instructed me that he was going to
16 handle the meeting.

17 Q. And by that, do I take it you weren't to say
18 anything unless he told you to?

19 A. In a sense, I was to follow his lead.

20 Q. Did you object to Mr. Hadl? Did you state to
21 Mr. Hadl that Universal should not claim any rights in "King
22 Kong" at the meeting?

23 A. I don't understand your question. You mean at
24 the meeting, did I say that?

25 Q. No, not at the meeting. Did you, prior to the
26 meeting when Mr. Hadl was giving you his instructions that he

A001775

1 was going to handle the meeting, did you raise any objection
2 to Universal claiming rights in "King Kong"?

3 A. I don't recall. But I don't think so.

4 Q. Did you at any time prior to the meeting with
5 Tiger tell Mr. Hadl that you had doubts, questions, or
6 whatever, about Universal claiming rights in "King Kong"?

7 A. I believe that I already testified that I
8 explained to Mr. Hadl why I wanted to terminate -- you know,
9 the various reasons why I wanted to terminate this agreement.
10 And that would have included the discussion with Mr. DiMuro.

11 Q. All right. Thank you.

12 Did you participate in preparation of a revised
13 license for Tiger?

14 A. I don't recall.

15 Q. You don't recall drafting a revised license for
16 Tiger?

17 A. I don't recall whether I did it.

18 Q. Do you recall that it was done?

19 A. Yes, it was done.

20 Q. Do you know whether Mr. Hadl did it?

21 A. I really don't recall it.

22 Q. Do you know whether anyone else, anyone from the
23 law department was involved in drafting the revised license?

24 A. I don't know.

25 Q. Do you know whether Mr. Adler was involved in
26 that?

A001776

1 you don't want to, either, so I intend to ask it formally.

2 Did you have permission from RKO at that time to
3 use these pictures in connection with your licensing of "King
4 Kong"?

5 A. My general recollection is that whatever I sent
6 to Tiger, I could use. Whatever that means. I really can't
7 go any further.

8 Q. But you didn't have a written agreement --

9 A. No.

10 Q. -- with RKO?

11 A. I did not.

12 Q. And what is your basis for stating that your
13 recollection now is that you could use them?

14 A. Well, I had lots of conversations with various
15 people from whichever studio I was speaking to, and just had
16 the general impression that whatever I could get ahold of I
17 could use, if I could get ahold of it.

18 Q. Okay. And you previously had told Tiger they
19 would have to create their own art work?

20 A. At some point I told them something like that.

21 MR. KIRBY: I would like to have marked as Defendant's
22 Exhibit 139 a letter from Mr. Rissman to Ms. Sifuentes dated
23 November 18, 1981.

24 (Defendant's Exhibit 139 was marked
25 for identification by the reporter
26 and is attached hereto.)

A000800

1 Q. And what did you say to him?

2 A. I don't recall specifically what I said to him.

3 Q. What did you say to him generally?

4 A. I don't recall that, either.

5 Q. Did Mr. Rissman in that conversation with you
6 express concern that since an application had been filed to
7 register "Donkey Kong," there would be a potential problem in
8 registering a trademark for "King Kong" for electronic games?

9 A. No. I think I may have explained to him that an
10 application would have to be based on -- probably on his
11 distribution. But I don't recall.

12 MR. KIRBY: Would you please mark as Defendant's
13 Exhibit 140 for identification a letter from a Mr. Wigman to
14 a Mr. Luce of Springwood Electronics dated January 27, 1982.

15 (Defendant's Exhibit 140 was marked
16 for identification by the reporter
17 and is attached hereto.)

18 Q. BY MR. KIRBY: Please look at Defendant's
19 Exhibit 140. Are you familiar with this document?

20 A.. I saw it last night.

21 Q. Mr. Fairhurst showed it to you last night?

22 A. Yes.

23 Q. Had you ever seen it before?

24 A. It appears to be the letter, a copy of which I
25 received from the executive at Dunbar Electronics just before
26 Toy Fair.

A001777

1 Q. Do you know who Mr. Wigman is?

2 A. No.

3 Q. Is it your understanding that he was an attorney
4 representing Dunbar?

5 A. I have no idea.

6 Q. But the representative of Dunbar sent this
7 letter to you?

8 A. He handed it to me.

9 Q. He handed it to you at the meeting at his
10 office --

11 A. Yes.

12 Q. -- in New York?

13 A. Yes.

14 Q. Did you discuss this letter with him?

15 A. Yes.

16 Q. And what was the substance of that discussion?

17 A. Well, generally he asked what we're going to do
18 about it, about Nintendo. And I said I would have to defer
19 to our attorneys.

20 Q. Did you express any opinion to him about this
21 letter?

22 A. No, I didn't.

23 Q. Did Mr. Adler?

24 A. No, he didn't.

25 Q. Did you deliver a copy of this letter to the
26 Universal or MCA law department?

A001778

1 to produce the "King Kong" game?

2 A. I don't recall that he said anything exactly
3 like that.

4 Q. Is there any basis for your statement that top
5 management other than Mr. Hadl was upset with you for
6 licensing "King Kong"?

7 A. My understanding was that Mr. Hadl didn't
8 initiate things like this by himself.

9 Q. You are speaking of your general experience at
10 MCA and Universal?

11 A. That's right.

12 Q. Do you know who Mr. Hadl reported to?

13 A. He reported to Mr. Sheinberg.

14 Q. During the fall of 1981, when you met with
15 Mr. Al Kahn of Coleco and Mr. Adler, did you discuss Coleco
16 licensing any Universal properties for video games?

17 A. In 1981?

18 Q. Yes.

19 A. I don't recall.

20 Well, yes we did. I recall now, we did. In
21 1981?

22 Q. Yes.

23 A. Yes.

24 Q. And what properties of Universal did you discuss
25 licensing with Coleco?

26 A. JAWS, SMOKEY AND THE BANDIT, and there may have

A000801

1 been others.

2 Q. Did you discuss licensing "King Kong" with them?

3 A. No.

4 Q. Did they express any interest in "King Kong"?

5 A. No, they didn't.

6 Q. Did you suggest "King Kong" as a property they
7 might want to license?

8 A. I don't recall.

9 Q. And were these licenses for Coleco to produce
10 games for its own home system?

11 A. We discussed with them what they could do, and
12 they said that they would guarantee to be out at some point
13 with all three primary systems; their own, Atari and Mattel.

14 I think, now that I recall, they were discussing
15 the possibilities of taking all of the major MCA/Universal
16 properties.

17 Q. And did you ever enter into an agreement with
18 them on that subject?

19 A. No, they never did.

20 Q. You said they were going to guarantee they would
21 have it out for all systems, including their own?

22 A. Mm-hmm.

23 Q. Did they tell you when they would have it out
24 by?

25 A. No. It was -- never got that firm. But it
26 would be within a reasonable time.

AEC00802

1 respect to the background of "King Kong" and how it came to
2 be licensed to Tiger?

3 A. I -- that's certainly a part of it. I can't say
4 that's all of it, because I don't specifically remember the
5 conversations in that way.

6 Q. But you are sure in your own mind, as you sit
7 here today, that the May 12, 1982 memo from you to Mr. Hadl
8 related in part to the Tiger matter?

9 A. Yes.

10 Q. Okay. Now, do you remember, after sending this
11 memo to Mr. Hadl, having a specific conversation with him
12 about the Tiger matter, in which he expressed this upsetment
13 to which you testified earlier?

14 A. Well, I don't remember whether it was before or
15 after this memo, but it was around, generally, this time.

16 Q. Okay. Now, earlier, you were asked a series of
17 questions about a decision that you took not to license "King
18 Kong." Do you remember the questions Mr. Kirby put to you in
19 that area?

20 A. Yes.

21 Q. Now, who made that decision?

22 A. Mr. DiMuro made the decision, and I made the
23 decision. We concurred.

24 Q. You concurred in that decision?

25 A. Yes.

26 Q. Was that the usual practice for Universal. to

A001779

1 have you and Mr. DiMuro make decisions as to which properties
2 Universal would license and which ones it wouldn't license?

3 A. My general practice was to consult with the
4 attorney after being informed who the attorney was, who was
5 most knowledgeable of and in charge of a particular project,
6 to discuss with them whether licensing was available and
7 whether it had any problems.

8 Q. But did the lawyers usually make the decision as
9 to what would be licensed and would not be licensed?

10 A. You mean what property would be licensed?

11 Q. That is correct.

12 A. They -- you're two steps ahead.

13 Q. All right. Please.

14 A. They would tell me whether it was available for
15 licensing. And if there were no problems, then it was my
16 decision and Mr. Adler's, of course -- I mean, it was
17 primarily his decision -- whether or not we would then
18 license it.

19 But if in fact there were no rights to license,
20 then, of course, the law department would tell me it could
21 not be licensed.

22 Q. In that sense, were you relying on the advice of
23 the law department? Let me put it to you that way, if I may.

24 A. Yes, of course.

25 Q. So in other words, you relied on Mr. DiMuro to
26 give you that advice before you could act or not act on it?

A001780

1 A. That's correct.

2 Q. So when you say a decision was taken not to
3 license "King Kong," is it fair to say that you what mean is
4 Mr. DiMuro made a decision, in your judgment, and then you
5 acted on it by not licensing "King Kong" from that point
6 forward?

7 A. Yes.

8 Q. How was it that you actually acted on that
9 decision?

10 A. Well, I think I testified earlier that
11 Mr. DiMuro said -- I mean I'm saying generally --

12 Q. What I am --

13 (Discussion off the record.)

14 MR. FAIRHURST: I would strike the question and put a
15 different question to her.

16 Q. What specifically did you do?

17 A. All right. This is what I had decided to do --

18 Q. After this conversation with --

19 A. -- with the advice of Mr. DiMuro.

20 Q. This is subsequent to this --

21 A. No, I just --

22 Q. -- discussion --

23 (Discussion off the record.)

24 Q. BY MR. FAIRHURST: What you did is subsequent to
25 your conversation with Mr. DiMuro, correct?

26 A. Correct.

A001781

COLEMAN, HAAS, MARTIN & SCHWAB, INC.

1 Q. Tell us what you did. 1

2 A. I allowed the Cooper agreement to expire, and I 2
3 told Mr. Adler that we were going to terminate the Tiger 3
4 Electronics agreement, and that we were simply going to, you 4
5 know, terminate -- but we were going to terminate on the 5
6 basis of their breach of contract. 6

7 Q. Because they had not submitted materials to you? 7

8 A. That's right. 8

9 Q. But they had not breached the contract at that 9
10 point, correct? 10

11 A. As a -- I felt that because of that clause, we 11
12 had to give them another month to make it a very firm breach, 12
13 or whatever number of months it was. I don't remember. 13

14 Q. If it was six months. 14

15 A. Mm-hmm. 15

16 Q. And you had this conversation with Mr. DiMuro, 16
17 as I recall, in either late February or early March. 17

18 A. Mm-hmm. 18

19 Q. Then it had to be six months from the time the 19
20 license was granted? 20

21 A. Well, I don't know specifically, you know, 21
22 exactly what the contract says. But it was generally 22
23 something like that. 23

24 Q. Well, I don't know what "something like that" 24
25 means. You mean six months or eight months? 25

26 A. I would have to look at the contract to tell 26

A001782

1 you.

2 Q. What I am getting at is, you are clear that that
3 was -- it was in your mind to see if they submitted anything,
4 and if they didn't submit anything, then you would have a
5 grounds for termination?

6 A. Absolutely. And I had discussed that with
7 Mr. DiMuro.

8 Q. Okay. Now, from your earlier testimony, you had
9 your first conversations about "King Kong" with Mr. Hadl
10 sometime in early May, correct?

11 A. Yes.

12 Q. All right. So between the time that you had
13 this discussion with Mr. DiMuro at which you took the
14 decision not to continue licensing "King Kong" and early May,
15 you had not spoken to Mr. Hadl about it, correct?

16 A. Between the time I had the conversation with Joe
17 DiMuro --

18 Q. Which you place in approximately late April
19 excuse me -- beg your pardon; I misspoke -- late February?

20 A. Late February, early March --

21 Q. Correct.

22 A. -- and May, between that period, I had not
23 discussed it with Mr. Hadl.

24 Q. Okay. As I understand your testimony, you never
25 advised Mr. Sheinberg of this matter at all?

26 A. I didn't speak to Mr. Sheinberg about it.

A001783

1 Q. You never advised Mr. Newman about it? 1

2 A. I didn't speak to Mr. Newman about it. 2

3 Q. Right. And you never advised Mr. Nuanes about 3
4 it? 4

5 A. I can't say that. 5

6 Q. All right. In other words, you are saying you 6
7 believe you may have discussed it with Mr. Nuanes? 7

8 A. I may have. 8

9 Q. Now, as far as Mr. Hadl is concerned, you did 9
10 not write him my memo on this subject; is that correct? 10

11 A. That's correct. 11

12 Q. As far as I understand your testimony, you wrote 12
13 no memo about this conversation with Mr. DiMuro to anyone on 13
14 the subject of "King -- 14

15 A. I didn't write memos. 15

16 Q. So there is no written advice from you, as it 16
17 were, to anyone on this subject; is that correct? 17

18 A. That's correct. 18

19 Q. And when you testified earlier that you believe 19
20 you discussed the decision to discontinue "King Kong" 20
21 licensing with Mr. Hadl, were you referring to the decision 21
22 to discontinue the Tiger license with Mr. Hadl; is that what 22
23 you were referring to? 23

24 A. I'm sorry. Could you start that again. 24

25 Q. All right. You testified in response to a 25
26 series of questions by Mr. Kirby that you discussed the 26

A001784

1 decision with Mr. Hadl not to continue licensing "King Kong"
2 properties?

3 A. Yes.

4 Q. Is that correct?

5 A. I discussed with Mr. Hadl the reasons why I
6 wanted to terminate the Tiger Electronics agreement, and that
7 included my conversation with Joe DiMuro.

8 Q. The reasons why you wanted to discontinue the
9 Tiger arrangement.

10 A. Mm-hmm.

11 Q. One of the reasons was that you were at that
12 point apprehensive, as I understand it, that they might be
13 copying "Donkey Kong"?

14 A. Yes.

15 Q. All right. And there were other reasons,
16 however?

17 A. Yes.

18 Q. Would you tell us what you believe you discussed
19 as far as the other reasons are concerned.

20 A. That we didn't have anything to license.

21 Q. And what did you tell Mr. Hadl?

22 A. I don't remember specifically. Just generally.

23 Q. Well, how do you differentiate between what you
24 told him specifically and generally?

25 A. I don't remember the exact words.

26 Q. Did you tell Mr. Hadl all about the 1976

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COLEMAN, HAAS, MARTIN & SCHWAB, II

1 room. And I tried to say goodbye, but they didn't pay any
2 attention, so I just left. Got up and left.

3 Q. You --

4 A. I got up, I left. I tried to say goodbye. They
5 paid no attention, so I left.

6 Q. Now, did you have any more meetings subsequent
7 to that meeting with Mr. Kroft?

8 A. Not that I recall.

9 Q. Had you met with Mr. Kroft prior to that
10 meeting?

11 A. You mean ever?

12 Q. Well, had you met -- Let's start with ever.
13 Did you know who Mr. Kroft was?

14 A. I'm not sure I could recognize him, but I met
15 him more than once. He worked at Rosenfeld, Meyer & Susman.

16 Q. You knew when you went to the meeting he was one
17 of Universal's outside lawyers, correct?

18 A. Yes.

19 Q. Had you discussed with Mr. Kroft prior to that
20 meeting the subject of Universal's rights in "King Kong"?

21 A. No.

22 Q. Did you know what Mr. Kroft's role in that issue
23 or that matter was?

24 A. Only that he was advising Mr. Hadl.

25 Q. Were you aware that he had been a lawyer for
26 Universal in that RKO litigation?

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1 A. I mean from time to time I may have realized
2 that he was, but I didn't remember it at the time. I mean, I
3 wasn't paying much attention to that, wasn't concerned with
4 it.

5 Q. As you testified here today, is it your
6 testimony that but for the -- with the exception of that one
7 meeting with Mr. Hadl, you had no occasion to discuss
8 Universal's rights in "King Kong" with Mr. Kroft?

9 A. I had no occasion to discuss those with
10 Mr. Kroft.

11 Q. Okay. And you never did?

12 A. No, I didn't.

13 Q. Okay. Going back to the decision that you took
14 after your discussion with Mr. DiMuro, which again we place
15 in late February 1982, did you, when reporting that decision
16 to Mr. Hadl at some subsequent time, tell Mr. Hadl the legal
17 basis upon which you concluded that Universal didn't have
18 rights in "King Kong"?

19 A. The legal basis was -- you know, you -- you are
20 trying to put a few words into my mouth.

21 Q. No I'm not. I'm asking -- you can answer the
22 question if I --

23 A. You say that I concluded. The legal basis was,
24 this was discussed with Joe DiMuro. Joe DiMuro was the only
25 one who could make a thorough legal judgment, because I was
26 not involved in that case and I did not study it. And I

A001786

therefore did not give any long-winded legal basis to Mr. Hadl.

It simply would have been that based on discussion had with Joe DiMuro, that we had come to this conclusion.

Q. Okay. You were relying on Mr. DiMuro?

A. Yes.

Q. Is that what you are --

A. Yes.

Q. -- testifying to?

A. Yes.

Q. So the correctness or incorrectness of that decision was up to Mr. DiMuro; is that what your testimony is here today?

A. It was up to the law department to make those decisions.

Q. But that wasn't your decision?

A. ~~No. Well, yes. It was based on~~

Q. Your decision?

A. ~~It was not my decision alone. It was not my decision alone. I participated in this decision and the discussion with Mr. DiMuro.~~

Q. The legal analysis was left to the law department, as I understand your testimony; is that correct?

A. To a certain extent, yes. I mean, I did discuss it with him, so I was involved in discussing trademark rights and copyright rights with Mr. DiMuro.

A001787

1 But as far as what rights came from Paramount
2 and RKO and anyone else involved in that lawsuit, that came
3 through Mr. DiMuro.

4 Q. When you were discharged, who actually told you
5 you were being discharged from Universal?

6 A. Mr. Adler.

7 Q. What did he tell you?

8 A. That I was to leave.

9 Q. Did he give you a reason?

10 A. That he couldn't give me a reason.

11 Q. Did you ask for one?

12 A. Well, he -- I don't remember our specific
13 conversation, I mean, the words there. But he had been
14 instructed to tell me to leave.

15 Q. You had worked for Mr. Adler for several years?

16 A. Yes.

17 Q. Did you have a good working relationship with
18 him?

19 A. Yes.

20 Q. You work for him today, do you not?

21 A. I work with him.

22 Q. With him today. So you have never had a
23 discussion with Mr. Adler as to why you were asked to leave
24 Universal?

25 A. Yes, of course I have.

26 Q. When did you have that discussion?

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1 products licensed included toys?

2 A. I don't really recall at the -- the only two
3 things that I recall at the moment were, I think T-shirts
4 with a big hand on them, and, of course, the costumes. And
5 there may have been also cups in 7-Eleven, also I think with
6 the hand. Otherwise, I just don't remember.

7 Q. You don't remember the specific products that
8 were being sold?

9 A. No.

10 Q. In your discussion with Mr. DiMuro in April --
11 excuse me -- in February of 1982, did you express concern to
12 Mr. DiMuro that if Universal continued to license Tiger or
13 entered into a license with a company like Dunbar, it might
14 run the risk of a trademark suit by Nintendo?

15 A. I don't recall.

16 Q. You may have?

17 A. Well, we would run the risk if they in fact did
18 copy, and I may have discussed that with him.

19 Q. When you say "we would run the risk if they
20 copied," are you referring to copyright problems or trademark
21 problems?

22 MR. KIRBY: Excuse me. I object to the form of the
23 question. I don't understand whether you are asking her now
24 or you are asking her when --

25 MR. FAIRHURST: I'm asking now.

26 MR. KIRBY: -- February of 1983.

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COLEMAN, HAAS, MARTIN & SCHWAB, INC.

1 MR. FAIRHURST: She can answer it both ways.

2 Q. You said you were afraid they were copying.
3 When you say that now, what do you want us to infer from
4 that; that you perceived a trademark problem or copyright
5 problem, or either or both?

6 MR. KIRBY: Same objection.

7 THE WITNESS: Well, certainly, copyright. And I don't
8 really recall -- I really don't recall exactly what we said.

9 Q. BY MR. FAIRHURST: So you can't remember the
10 specifics of this conversation, I take it, here today?

11 MR. KIRBY: Objection.

12 THE WITNESS: My conversation in February?

13 Q. BY MR. FAIRHURST: That's correct, February of
14 '82, with Mr. DiMuro.

15 A. I think that I discussed -- I testified as to
16 what we discussed in -- generally, and I think I have been
17 pretty specific even though I've been relatively general.

18 I certainly discussed with him prior to getting
19 into what rights we had -- and I think I testified to this --
20 what had been occurring and what was happening, and what I
21 perceived to be happening with Tiger Electronics, and what
22 had happened in a meeting with Dunbar.

23 And I testified as to what did happen, and I
24 certainly discussed all of that with Mr. DiMuro. I can't
25 really get more specific than that.

26 Q. Ms. Sifuentes, were you aware as you had this

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1 A. As far as -- I need your question back again. I
2 think I'm getting confused.

3 Q. I can sympathize with you. It was a rather
4 opaque question.

5 You remember Mr. Kirby, very early on in the
6 deposition, said he would use the term MCA to include
7 Universal and all its family of companies that related to the
8 "King Kong" matter, correct?

9 A. Mm-hmm.

10 Q. Now, when you testified, just as you did a few
11 minutes ago, that as far as you are concerned, there was a
12 stop to "King Kong" licensing --

13 A. Yes.

14 Q. -- you are only speaking with respect to MCA,
15 Merchandising Corporation of America?

16 A. I'm -- that is the only corporation in which I
17 had any knowledge of -- I mean that -- we handled licensing
18 and we were primarily in charge of the whole thing; and that
19 at one point, it was taken out of our hands.

20 Q. The licensing of "King Kong," the litigation
21 with Nintendo, all of that was something that Universal was
22 handling, as opposed to Merchandise Corporation of America?

23 A. Mr. Sheinberg was the president of Merchandising
24 Corporation of America. So I don't know which corporate
25 entity you would say was doing anything.

26 Q. When you refer to --

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1 A. But it was not Mr. Adler or myself.

2 Q. When you refer to them, in your mind when you
3 were referring to the management of the corporation, who do
4 you have in mind as the manager of the corporation?

5 A. Management of MCA is primarily Mr. Sheinberg.

6 Q. Okay. And the top executives?

7 A. Well, in my mind it's Mr. Sheinberg.

8 Q. Okay. He is the management?

9 A. To me, yes. Especially because he was the
10 president of Merchandising Corp. We didn't go to other
11 people.

12 Q. All right. But you were not one of
13 Mr. Sheinberg's lawyers, I take it?

14 A. Mr. Hadl was his lawyer.

15 Q. In response to a question put to you by Mr.
16 Kirby regarding your discussions with Mr. Hadl over the
17 licensing of Tiger, I believe you said in the discussion,
18 Mr. Hadl questioned what rights Universal was licensing to
19 Tiger; is that correct?

20 A. No. He questioned whether we had rights to
21 license.

22 Q. He raised that question with you; is that what
23 you mean?

24 A. Yes. He said, you know -- right. I don't
25 remember exactly what he said.

26 Q. It is important, because if you can't remember

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1 the specific words --

2 A. No, he -- I can't remember the specific words,
3 but I do remember specifically that he was angry. And he
4 asked me on what basis, what rights^e did I think Universal had
5 to license "King Kong." 2/6/83

6 Q. Okay. Now, the memo of May 12, 1982, could that
7 have been a response on your part to that question? And I
8 will put that back in front of you again.

9 A. This memo.

10 Q. Meaning --

11 A. This is February 15.

12 Q. I beg your pardon. Do you have it in front of
13 you?

14 A. I probably do. This is it, May 12.

15 Q. Plaintiff's Exhibit 135. Was your memo to
16 Mr. Hadl a response to that question?

17 A. I never write -- no.

18 Q. That is a memo from you, is it not?

19 A. Yes. I only write memos if I am specifically
20 asked to do so. So Mr. Hadl had to ask me at a specific time
21 to send him a memo on this. So it wouldn't have been a
22 general response to a meeting.

23 Q. That's not my question.

24 A. He would have asked me to send him material.

25 Q. And that's what he did?

26 A. Yes, and I responded.

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1 Q. Okay. Now, my question is: Was your memo and
2 the response in that memo -- by which I mean the documents
3 you sent him -- a response to the question, "What rights do
4 we have in 'King Kong'?"

5 A. I don't recall.

6 Q. It could have been?

7 A. I just don't recall.

8 Q. But it was about this time at which the question
9 arose; is that correct? When I say "about this time," I mean
10 May 12.

11 A. It was in -- I don't know. I wouldn't say that
12 day, but it certainly was in May.

13 Q. As you sit here today, you can't testify that
14 that memo was a response, but it may have been?

15 A. Well, I don't really recall.

16 Q. Okay.

17 Q. When Mr. Hadl learned that Tiger had been
18 licensed --

19 A. Mm-hmm.

20 Q. -- to manufacture an electronic game under the
21 "King Kong" trademark, you say he criticized you and was
22 unhappy with that when he learned that.

23 A. That I had licensed "King Kong."

24 Q. That's correct.

25 A. Yes.

26 Q. Did you tell him at that time that you and

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1 Mr. DiMuro had made that decision to license Tiger well
2 before your conversation with Mr. DiMuro in February of '82?

3 A. Well, I think that I already testified that I --
4 I don't know if I did testify to that. I told him on what
5 basis I had initially licensed, and I also told him on what
6 basis I wanted to terminate.

7 Q. Terminate what?

8 A. The Tiger Electronics "King Kong" license.

9 Q. And that was the only license existing to
10 terminate, correct?

11 A. I believe so. I don't remember exactly when the
12 Ben Cooper license expired. But it wasn't a problem.

13 Q. That wasn't a problem, because Mr. Cooper had
14 already indicated to you an intention not to continue with
15 it?

16 A. That's right.

17 Q. So you didn't have to make any decision to stop
18 licensing Ben Cooper, did you?

19 A. Well, the way you are characterizing it -- of
20 course I had to make a decision that I was not going to
21 license him any further, because he could have taken an
22 option.

23 Q. In other words, had he come to you and said he
24 wanted to license --

25 A. I would have said no.

26 Q. But he didn't do that, did he?

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1 A. No.

2 Q. He spared you the necessity of announcing that
3 decision to him, if I may put it that way?

4 A. I called him and I asked him, and he told me he
5 would not be renewing; that he really wasn't interested; it
6 was not very popular.

7 Q. And you said "Thank you," and that was the end
8 of the discussion or thereabouts?

9 A. More or less, yes.

10 Q. Okay. Now, did you tell Mr. Hadl that you and
11 Mr. DiMuro had come to a decision to try to stop the Tiger
12 license?

13 A. Mm-hmm.

14 Q. Did you tell Mr. Hadl that that decision had
15 been made in the context of a discussion in which you would
16 not continue to license "King Kong" to anyone?

17 A. I believe so.

18 Q. And what did Mr. Hadl say in response to that?

19 A. Mr. Hadl, I can only remember generally, told me
20 it was not my concern; that he was in charge and he would
21 make the legal decisions.

22 Q. All right. In other words, Mr. Hadl was not
23 interested -- let's put it in the bluntest terms -- Mr. Hadl
24 was not interested in your advice; is that what you are
25 really testifying to?

26 MR. KIRBY: Objection.

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